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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Petitioner,

v.

UNITED STATES OF AMERICA AND
CONSOLIDATED RAIL CORPORATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973

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ISSUES PRESENTED

In the opinion of the petitioner, the following issues are presented by this petition:

1. Did Congress abrogate a contractual obligation of the United States to employees of seven railroads conveying their rail properties to the Consolidated Rail Corporation pursuant to the Regional Rail Reorganization Act of 1973 in violation of the Fifth Amendment to the Constitution of the United States, when it repealed in 1981 Title V of that statute providing various protections to such employees adversely affected by the conveyances?

2. Did the Consolidated Rail Corporation violate the requirements of Sections 2, First, 2, Seventh, and 6 of the Railway Labor Act prohibiting the carrier from revising or terminating any provision of a collective bargaining agreement to which it was a party, when the carrier refused to pay Title V benefits embodied in a collective bargaining agreement after the repeal of the statutory provisions?

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PETITION FOR A WRIT OF CERTIORARI TO THE SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973

The petitioner, Railway Labor Executives' Association ("RLEA"), respectfully prays that a writ of certiorari issue to review the final judgment of the Special Court, Regional Rail Reorganization Act of 1973 ("Special Court"), dated December 23, 1983, dismissing on the merits the Complaint of petitioner RLEA requesting the Special Court (1) to declare the action of Congress in repealing Title V of the Regional Rail Reorganization Act of 1973,[1] to be unconstitutional as violative of the Fifth Amendment to the United States Constitution and to enjoin enforcement of the repealing statute; and (2) to declare that the Consolidated Rail Corporation may not unilaterally change provisions of its collective bargaining

[1] 45 U.S.C. § 771, *et seq.*

agreements containing the labor protective conditions of Title V and enjoin such action as violative of the Railway Labor Act.[2]

OPINIONS BELOW

The opinion of the Special Court, not yet reported, was entered on December 19, 1983, and is reproduced as Appendix H hereto. The final judgment of the Special Court was entered on December 23, 1983, and is reproduced as Appendix I hereto.[3]

JURISDICTION

The Special Court was established by Title II, Section 209 of the Regional Rail Reorganization Act of 1973 (hereinafter referred to as the 3R Act, 45 U.S.C. § 719). Its jurisdiction to entertain the Complaint of petitioner RLEA was provided by Section 1152(a) of the Northeast Rail Service Act of 1981, (hereinafter referred to as "NERSA"),[4] which reads as follows:

> Section 1152. (a) Notwithstanding any other provision of law, the special court shall have original and exclusive jurisdiction over any civil action—
>
> (1) for injunctive, declaratory, or other relief relating to the enforcement, operation, execution, or interpretation of any provision of or amendment made by this subtitle, or administrative action taken thereunder to the extent such action is subject to judicial review;
>
> (2) challenging the constitutionality of any provision of or amendment made by this subtitle;

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[2] 45 U.S.C. § 151, *et seq.*

[3] The Appendix is hereinafter cited as "App."

[4] 45 U.S.C. § 1101, *et seq.*

(3) to obtain, inspect, copy, or review any document in the possession or control of the Secretary, Conrail, the United States Railway Association, or Amtrak that would be discoverable in litigation under any provision of or amendment made by this subtitle; or

(4) seeking judgment upon any claim against the United States founded upon the Constitution and resulting from the operation of any provision of or amendment made by this subtitle.

The judgment of the Special Court was entered on December 23, 1983 (App. I). This petition is governed by the provisions of Section 1152(b) of NERSA (45 U.S.C. § 1105(b)), which require the petition to be filed not more than 20 days after entry of such judgment. The provisions of such section read as follows:

(b) A judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States, except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of any provision of this subtitle shall be reviewable by direct appeal to the Supreme Court of the United States. Such review is exclusive and any petition or appeal shall be filed not more than 20 days after entry of such order or judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the provisions of the Fifth Amendment to the Constitution of the United States, Section 1144 of NERSA, Title V of the 3R Act (45 U.S.C. § 771, et seq.), and Sections 2, First, 2, Seventh, and 6 of the Railway Labor Act (45 U.S.C. §§ 152, First, Seventh and 6).

The Fifth Amendment to the United States Constitution reads as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, in the Militia, when in actual service in time of War or public danger; or shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Title V of the 3R Act provided protection for employees of seven (7) railroads placed in a worse position with respect to compensation, fringe benefits, rules, and working conditions by the conveyance to Conrail on April 1, 1976, of the rail properties of their employing carriers pursuant to Section 303 of the 3R Act (45 U.S.C. § 743). Applicable sections of the 3R Act are reproduced where pertinent in the petition.

Section 1144(a) of NERSA repealed the provisions of Title V of the 3R Act. The Section reads as follows:

> Section 1144(a)(1). Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 771 et seq.), and the items in the table of contents of such Act relating to such V, are repealed.
>
> (2) Notwithstanding the repeal made by paragraph (1) of this subsection—
>
> (A) benefits accrued as of the effective date of this subsection as a result of events that occurred wholly prior to October 1, 1981, shall be disbursed except as provided in paragraph (3); and

(B) any dispute or controversy regarding such benefits shall be determined under the terms of the law in effect on the date the claim arose.

(3) Benefits shall not be disbursed under paragraph (2)(A) unless the employee has filed a claim for such benefits within 90 days after the date of repeal; except that, with respect to a claim which is the subject of or is based upon any arbitration decision issued after the date of repeal, such 90-day period shall not commence until such arbitration decision is issued to the employee and the employee's representative; and no benefits shall be disbursed unless appropriations for such purposes are or become available.

STATEMENT OF THE CASE

This litigation arises out of the act of Congress in repealing the protective benefits for railroad employees embodied in Title V of the 3R Act (45 U.S.C. §§ 771, *et seq.*) and the unilateral refusal of Conrail to provide such protections where embodied in collective bargaining agreements negotiated pursuant to the Railway Labor Act (45 U.S.C. §§ 151, *et seq.*)

The 3R Act was enacted by Congress as Public Law No. 93-236, effective January 2, 1974 (45 U.S.C. § 701, *et seq.*) The statute was enacted, as the findings set forth in Section 101(a), (45 U.S.C. § 701(a)), thereof state, for the essential purpose of continuing and improving essential rail service in the northeast region of the United States, which Congress found to be in the public interest as necessary to the preservation and maintenance of adequate national rail services and an efficient national rail transportation service. The statute provided for the creation of the "Consolidated Rail Corporation" (Conrail) to operate the rail properties of the seven northeast railroads then in reorganization proceedings in federal courts

under Section 77(b) of the Bankruptcy Act.[5] Title V was enacted as an integral part of the statute because some 40 years of history had demonstrated that just and reasonable treatment of railroad employees was an essential element of the public interest in the maintenance of an adequate and efficient transportation system.[6] Such a conclusion was recognized and set forth by this Court in its unanimous decision on December 4, 1939, in *United States* v. *Lowden*, 308 U.S. 225, reversing a decision of a lower Federal Court invalidating employee protective conditions imposed by the Interstate Commerce Commission (hereinafter, "ICC" or "Commission") in authorizing a lease of a railroad by one railroad company to another. In affirming the validity of the Commission's action, this Court declared:

> One must disregard the entire history of railroad relations in the United States to be able to say that the just and reasonable treatment of railroad employees in mitigation of the hardship imposed on them in carrying out the national policy of railway consolidation has no bearing on the successful

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[5] The seven railroads which conveyed their rail properties to Conrail pursuant to the 3R Act and whose employees were covered by Title V of that statute were:

Penn Central

Lehigh Valley

Erie Lackawanna

Reading Railroad Company

Central of New Jersey

Lehigh Hudson

Pennsylvania Reading Seashore Lines

Ann Arbor R.R. (portions)

[6] Pub. L. No. 93-236, 87 Stat. 986 (1973)

> prosecution of that policy and no relationship to the maintenance of an adequate and efficient transportation system.
>
> * * *
>
> The now extensive history of legislation regulating the relations of railroad employees and employers plainly evidences the awareness of Congress that just and reasonable treatment of railroad employees is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but *that it promotes efficiency, which suffers through loss of employee morale when the demands of justice are ignored.* (Emphasis supplied.)

Id. at 234, 236.

The Court's opinion refers to the fact that there was then pending before the Congress proposals to amend the Interstate Commerce Act to require the Commission to include, as a condition of its approval of any consolidation or lease transaction, "a fair and equitable arrangement to protect the interests of the employees affected." Such legislation was subsequently enacted as Section 5(2)(f) of Part I of the Interstate Commerce Act (now codified as 49 U.S.C. § 11347).

Since 1940, there has developed within the railroad industry an extensive network of collective bargaining agreements, Commission decisions, and legislation, providing protection for employees of railroads involved in various transactions against the adverse affects of the consummated transaction. These protections are traceable back to the "Agreement of May, 1936, Washington, D.C., Washington Job Protection Agreements" between 219 railroads and 21 labor organizations representing railroad employees, referred to by this Court in its *Lowden* decision (308 U.S. at 234). The Washington Agreement provided that no employee of a particular carrier

involved in a particular coordination should "be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination." To this end, the agreement provided allowances for displaced employees and terminated employees, protection of fringe benefits, and protection against losses from the sale of property required by a change of work location, as well as, expenses in moving to such location. Every collective bargaining agreement in the industry dealing with employee protection and every legislative enactment covering the subject between 1936 and 1973, was patterned after the Washington Agreement.[7] Indeed, it even became the pattern for the Civil Aeronautics Board in the airline industry in approving air carrier transactions and for agreements between airlines and organizations representing carrier employees.[8]

Consequently, when federal legislation became necessary in 1973 to create a viable rail system capable of providing rail service to the Northeast region of the United States, it was clear that such legislation must provide for the just and reasonable treatment of the employees involved. Such treatment was required by the facts of economic necessity to establish stable and efficient rail operations which are necessary to the needs of Commerce, the national defense, and the environment of the country. Moreover, the task of Congress was complicated by the fact that it was compelled to consolidate seven railroads, the largest of which was the Penn Central, with some 60,000 employees who were covered by

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[7] See: *Southern Railway-Control-Cent. of Ga. Ry. Co.*, 331 I.C.C. 151 (1967).

[8] See: *Braniff Master Executive Council etc.* v. *C.A.B.*, 693 F.2d 220, 222 (D.C. Cir. 1982).

protections embodied in collective bargaining agreements in the decades since 1936.[9] Copies of typical agreements are attached as exhibits to the Stipulation between the parties before the Special Court. The legislative history of the 3R Act clearly shows that the Congress was made aware of these contracts and the employee rights based thereon as well as the legal need to preserve such rights.

In its report to Congress on the proposed 3R Act, the Commission stated:[10]

> "It should be recognized that the railroad workers have some substantial legal rights to employment and employment benefits. Those rights have been won over many years of collective bargaining. *The railroad employee's rights, however, high the price seems today, are legal rights, evidenced by binding contracts.*"

The report also advised the Congress that the employees involved "*are entitled legally and morally*, to assistance in pursuit of their contractual rights" as well as compensation[11] and the need to provide "comparable protection" if there was to be created a viable Conrail to replace the seven existing carriers.

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[9] Examples of these contracts are attached as exhibits to the Stipulation of Facts between the parties (App. D).

[10] "Northeast Railroad Investigation, Report of the ICC to the Senate Committee on Commerce and the House Committee on Interstate and Foreign Commerce," p. 37 (1973). (emphasis supplied).

[11] *Id.* (emphasis supplied).

Mr. W. Graham Claytor, then President of the Southern Railway System, advised the Senate Committee on Commerce to this effect as follows:[12]

> Second, in this particular instance we are dealing with employees who have that protection, lifetime attrition protection under the terms of the . . . agreement that was entered into in connection with the New York Central and Pennsylvania Merger. If we do not give comparable protection, something is being taken away from those employees—*a contract right* which they now have.
>
> It was perfectly clear that it would be utterly impossible to reach any kind of agreement that would not result in strikes, dislocation, everything else, unless this were recognized. (emphasis supplied).

Likewise, Mr. Stephen Ailes, the President and Chief Executive Officer of the Association of American Railroads, advised the same Senate Committee that the situation was "*sui generis*" because the Penn Central merger "guaranteed the rights these employees already have when this particular situation came about.[13]

Congress resolved the moral and legal obligations of which it had been advised by legislating Title V as an integral part of the 3R Act. Title V provides as follows:

First: The provisions of Title V covered a category of "protected employees," *i.e.*, those employees of the seven railroads on January 2, 1974, when the 3R Act became effective and on April 1, 1976, when the rail properties of such railroads were conveyed to Conrail who became

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[12] Hearings before Surface Transportation Subcommittee of the Committee on Commerce of the United States Senate, November 15-19, 1973, page 969.

[13] *Id.* at 971.

Conrail employees upon the conveyance date.[14] Section 505 provided such employees protection against being placed in a "worse position" in the form of (a) monthly displacement allowances for employees deprived of employment or adversely affected with respect to compensation; (b) separation allowances for employees accepting an offer of Conrail to resign; (c) termination allowances for employees with less than three years service whom Conrail chose to terminate within one year; and (d) payment of moving expenses required to move to another work location requiring a change of residence.

The length of these benefits was tied to years of service. They could not be received without the employee meeting certain standards. These included a requirement that the employee exercise his or her seniority to obtain the highest paying job his or her seniority would permit not requiring a change in residence,[15] and provisions authorizing Conrail to charge the compensation of such a job against the employee if he or she failed to bid for it. Moreover, the statute provided that a monthly displacement allowance terminated upon the employee's death, retirement, resignation, or dismissal for cause, and upon suspension of any such allowance for the period of a disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to obtain and retain a job by exercise of seniority.

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[14] Sections 501(1), (2), and (3). 45 U.S.C. §§ 771(1), (2), and (3).

[15] As set forth *infra* page 12, the statute permitted a transfer of employees throughout the system. If the transfer was to a location requiring a change in residence, the employee could go on furlough without an allowance or leave Conrail's employment with severance pay.

The purpose of these protections was set forth in Section 505(a) of the 3R Act (45 U.S.C. § 775(a)) as follows:

> Sec. 505. (a) EQUIVALENT POSITION. A protected employee whose employment is governed by a collective-bargaining agreement will not, except as explicitly provided in this title, during the period in which he is entitled to protection, be placed in a worse position with respect to compensation, fringe benefits, rules, working conditions, and rights and privileges pertaining thereto, including benefits under any employee pension benefit plan in effect on December 1, 1975, other than a plan maintained primarily for the purpose of providing deferred compensation for a select group of management personnel or other highly compensated employees . . . ."

Congress also required in Section 502 of the statute (45 U.S.C. § 772) that Conrail offer employment to all "protected" employees of the seven railroads and apply to such employees the protective provisions of Title V.

Second: Congress provided Conrail with flexibility in the utilization of the services of the protected employees by (a) giving the carrier in Section 503 (45 U.S.C. § 773) the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties acquired pursuant to the 3R Act in accordance with the conditions set forth therein and by (b) giving the carrier the right in Section 505(d) (45 U.S.C. § 775(d)) the right to transfer an employee deprived of employment to any bona fide vacancy within the employee's craft or class for which the employee was qualified in accordance with the provisions of the section. If such an employee refused such a transfer, he or she had the option of becoming a voluntary furloughee with a suspension of a right to receive a monthly displacement allowance or accepting severance pay.

Third: Congress provided in Section 504(a) of the 3R Act (45 U.S.C. § 774(a)) that until replaced by the negotiation of a single new agreement covering rates of pay, rules, and working conditions of such craft or class of employees, Conrail was required to assume and apply the obligations of all the contracts on the properties of each of the seven railroad properties conveyed to Conrail, "except that the Agreement of May 1936, Washington, D.C., and provisions of other existing job stabilization agreements shall not be applicable to transactions effected pursuant to this Act with respect to which the provisions of Section 505 of this title shall be superseding and controlling." Thus, Congress achieved uniformity of protections and administration thereof by substituting Title V protections for those contained in existing collective bargaining agreements. (45 U.S.C. § 774).

This provision was accepted by the railway labor organizations as providing a "fair and reasonable" arrangement for the protection of employees adversely affected by the conveyance of their employer rail properties to Conrail in substitution for the contract rights of the employees involved which the Interstate Commerce Commission had advised the Congress were legal rights which there was a "legal and moral obligation" to preserve. This acceptance was made in spite of the fact that Title V provided less than existing contract rights and gave greater freedom to the employing carrier with respect to transfer and utilization of employees than existing contracts. It was the employee's contribution toward making Conrail a viable operation.

Many disputes arose with respect to the interpretation and application of Title V, which were settled by the arbitration board provided by Section 507, (45 U.S.C. § 777), over Conrail objections on the basis of the statuto-

ry language. This lead to amendments by Congress in the so-called Staggers Act, Pub. L. No. 96-448, 94 Stat. 1895 (1980), effective October 1, 1980, the most important of which was to change the basis of calculating monthly displacement allowances insisted upon by the United States Railway Association, created by Section 201 of the 3R Act to create a Conrail system plan, and adopted by Congress[16] several months after the original passage of the statute. Only a handful of disputes arose after the Staggers Act amendments with respect thereto.

In 1981, Congress passed NERSA, (45 U.S.C. § 1101, *et seq.*) the declared purposes of which were (1) to remove by a date certain, the federal obligation to subsidize the freight operations of Conrail; (2) to transfer Conrail commuter services to other entities; and (3) to return Conrail freight service to the private sector. The "goals" of the legislation were set forth in Section 1134 thereof (45 U.S.C. § 1103). Although these goals included a reduction of costs by collective bargaining, no mention was made of Title V. Section 1144(a) of the statute, quoted *supra*, page 4, repealed Title V. Section 1143(a) provided substantially inferior protections or none at all for many employees. (App. A, Para. 19).

In 1979, the Brotherhood of Railway and Airline Clerks, Freight Handlers, Express and Station Employes (BRAC), negotiated a new collective bargaining agreement to replace the agreements between BRAC and each of the seven (7) railroads which had conveyed their rail properties to Conrail, as required by Section 504(d) of the 3R Act. Rule 62 of this agreement, effective April 27, 1979, which appears as Exhibit C to the Stipula-

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[16] The proposal for calculation recommended by the railroads and railway labor organizations contained in the original statute followed the Washington Agreement.

tion of Facts between the parties in this litigation, (App. D)[17] imposes on Conrail as a matter of employer-employee contractual obligations, the benefits as provided in Title V. Rule 62 reads as follows:

> "Protected employees will be afforded the benefits as provided in Appendix No. 8 or 9, whichever is applicable."

Appendix 8 referred to in Rule 62 is a reproduction of Title V intact and Appendix 9 is a memorandum for the protection of BRAC represented employees in Canada.

After the repeal of Title V, RLEA, filed its Complaint in the Special Court against the United States and Conrail on behalf of its twenty (20) affiliated organizations representing Conrail employees. (App. A, Para. 3).

Count I of this Complaint alleged (1) that the United States is bound by its contracts (para. 15); (2) that Conrail employees relied to their detriment in giving up all vested labor protection and scope rules to which they would have been entitled in exchange for the promise and eventual passage of the employee protections contained in Title V; and (3) that Congress violated the Fifth Amendment to the United States Constitution in repealing Title V by violating its contractual promises to continue the protection afforded by Title V, by which the employees gave up their coexisting contractual promises (App. A).

Count II of the Complaint alleged a contractual obligation by Conrail to honor Title V rights by incorporating

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[17] The entire collective bargaining agreement has not been reproduced as a part of App. D because of its length. Only Rule 62 has been reproduced.

those rights in collective bargaining agreements; and that Conrail had unilaterally refused to comply with its contract obligations in violation of the provisions of Sections 2, First, 2, Seventh, and 6 of the Railway Labor Act governing the making, maintenance, and revision or termination of such agreements. (App. A).

Defendants United States and Conrail filed answers to the Complaint. (App. B and C). The parties entered into a Stipulation of Facts, including the authentication of documents attached hereto. (App. D).

RLEA filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the grounds that there was no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law. (App. E). Defendant United States filed a Motion for Summary Judgment on Stipulated Facts as also did Conrail. (App. F and G).

On December 19, 1983, the Special Court filed its decision finding that Title V constituted social welfare legislation conferring only gratuitous benefits, that the repeal of such legislation does not violate the Fifth Amendment unless it is arbitrary and irrational, and that the repeal of Title V was based on rational grounds. The decision also rejected the claim for relief against Conrail on the basis of the BRAC-Conrail collective bargaining agreement on the grounds that the repeal of Title V voided any contractual obligations of Conrail to pay Title V benefits. (App. H).

On December 23, 1983, the Special Court filed its judgment dismissing the RLEA complaint on the merits. (App. I).

REASONS FOR GRANTING THE WRIT

I. The Decision Of The Special Court Involves A Substantial Constitutional Issue That Should Be Decided By This Court

Count I of the Complaint in this case presented for decision the important constitutional issue of whether Title V of the 3R Act, providing uniform protections for employees of seven (7) railroads consolidated into Conrail, as a substitute for existing protections set forth in collective bargaining agreements and orders of the Interstate Commerce Commission, were contractual obligations of the United States. If they were, Congress was without authority to abrogate those obligations as it did in repealing Title V. Such issue is of substantial importance because of the wide network of protective collective bargaining agreements negotiated pursuant to federal law in the past 40 years in the railroad industry and the countless numbers of employees with rights under such agreements as well as the large number of protective rights embodied in other federal statutes, Interstate Commerce Commission orders already issued and continuing to be issued pursuant to federal law, and the even larger number of arbitration awards interpreting and applying such laws and orders. To a lesser degree, the issue has an impact on similar rights in the volatile air transportation field where there are similar employer-employee arrangements. If these can be brushed aside as the decision below holds, there will be a substantial impact on the transportation field.

The importance of the issue takes on even greater significance because of the circumstances of the present case in which the Interstate Commerce Commission, the federal agency created by Congress to regulate the railroad industry, officially reported to Congress on the proposed 3R Act that the railroad workers involved had

"some substantial legal rights to employment and employment benefits," and that such rights, "however high the price," are "legal rights" and that the workers were entitled "morally and legally" to assistance in pursuit of their contractual rights. Such report was followed by Congressional action enacting Title V substituting for these employee rights a uniform package of similar rights. While it is true that the 3R Act does not expressly purport to create a contract with the employees through such an exchange, this Court has recognized that this is not necessary to establish an intent to create contractual rights. *Indiana Ex Rel. Anderson* v. *Brand*, 303 U.S. 95 (1938); *United States* v. *Larionoff*, 431 U.S. 864 (1977). In the *Indiana* case, this Court stated that "it is established that a legislative enactment may contain provisions which, when accepted as the basis of action by individuals, became contracts between them and the state or its railroads." The *Larionoff* case contains similar conclusions. The employees involved took action in reliance on the guarantees contained in Title V which were essential to the formation of Conrail. They also sacrificed already existing rights embodied in agreements and ICC orders. Nor was this reliance unjustified by the facts. When Congress provides protective rights as a substitute for existing rights, which the ICC had advised Congress imposed a "legal and moral" obligation, it is difficult to perceive how the employees or any other reasonable persons could have thought anything other than that Congress was exchanging one set of contractual legal rights for other such rights, particularly when there is nothing in the statute or legislative history to the contrary. The decision below (App. H) erroneously states that the position of the employees to be that Congress was fully aware that Title V would supersede existing employee rights. The facts, however, show a much greater degree of Con-

gressional knowledge. They show that the ICC, the federal agency created to advise Congress in such matters, had advised that the employees possessed legal and binding contractual rights which created both a legal and moral obligation on Congress to assist "in the pursuit of their contractual rights." It defies belief that Congress faced with such advice, deliberately destroyed the employee rights without giving any explanation for so doing, or providing new contract statutory rights. The Commission's advice to Congress, along with the same advice from railroads, completely negates the findings of the decision below that the legislative history of Title V does not indicate Congressional intent to compensate employees for forfeited contractual rights. That history speaks to the contrary.

The decision is also erroneous in other vital respects. It relies heavily, if not entirely, on a footnote in a prior decision of another panel of the Special Court, identified as *Hinds* v. *Conrail*, 518 F.Supp. 1350, 1352 n.2 (Sp. Ct. RRRA, 1981) *cert. denied*, 454 U.S. 1145 (1982), to the effect that Title V constitutes "social welfare legislation" for purposes of Fifth Amendment review. A reading of the *Hinds* decision, however, shows that (1) no claim that Title V rights where contractual was involved; (2) that the individual plaintiffs in that case presented only a discriminatory treatment claim; and (3) that plaintiffs agreed to the standard of judicial review applicable to a repeal of "gratutious social welfare legislation."

The *Hinds* decision involved only the issue of whether the Staggers Act amendments of 1980 to Title V concerning the method of calculating monthly allowances discriminated between groups of employees. The decision itself specifically so states in the following language:

> The only issue in this case is whether this aspect of the Staggers Act discriminates between operating

> employees on the one hand, and maintenance-of-way and managerial employees, on the other, in a way so lacking in rational justification as to violate the equal protection component of the due process claims of the fifth amendment.

548 F.Supp. at 1352. Moreover, the same footnote in the *Hinds* case on which the present decision rests further states as follows that a contract claim in the complaint had been withdrawn:

> The plaintiffs' constitutional contentions are narrower in their brief than in their complaint in several respects.
>
> * * *
>
> Second, the complaint alleges that Title V was enacted as a quid pro quo for contractual rights purportedly waived in the transactions that created Conrail. . . . But the plaintiffs withdraw that theory in their brief at 1 n.1.

The subsequent statement, therefore, in footnote 2 to the effect that Title V was perceived as a social welfare program is gratuitous dicta not addressed to any issue before the court below and not accompanied by any analysis or briefing to assist the court below on the contractual nature of Title V rights.

In spite of the above cited facts, the decision below insists (App. H) that the statement in footnote 2 of the *Hinds* case was not dicta but was necessary to the court's decision in that case to apply minimal scrutiny analysis and thus has significance for the present case. Not only is such a finding contrary to the cited facts, but also the finding in the *Hinds* case itself was a result of the agreement of plaintiffs therein to the application of the minimal scrutiny standard so that there was no issue with respect

thereto. That finding is set forth at page 1353 of the *Hinds* decision as follows:

> "The plaintiffs accept the minimum rationality standard as applicable to this case. . . .

This Court consequently has before it a decision from below on the important issue of whether, as the decision itself states (App. H at 89a), "Title V created a contractual obligation of the United States or whether the Title V labor protection provisions were instead gratuitous, social welfare benefits" which is disposed of by citing as controlling case law a footnote of a different panel in a different case not involving any contract claim in which the plaintiffs agreed that a noncontractual standard was applicable. This erroneous application of the *Hinds* case is identical since the court below (App. H at 92a) used the finding that Title V constituted social welfare legislation, conferring gratuitous, rather than contractual benefits, to apply noncontract standards to the repeal action. By this means, the court below concluded that the desire to reduce expenditures constituted a valid basis for the repeal, a basis which the decision below (App. H at 90a) agrees would not permit abrogation of contract rights.

It is respectfully submitted that this Court should not permit an important issue such as is to be involved to be decided by a lower court without a full review on the basis of such an analysis. This is particularly true in the circumstances involved which are enumerated above.

II. The Decision Of The Special Court Raises Important Issues With Respect To Federal Statutory Law That This Court Should Decide

In 1979, BRAC completed negotiation of a collective bargaining agreement with Conrail to replace the sepa-

rate agreements between BRAC and the railroads whose rail properties were conveyed to Conrail. Such an agreement was required by Section 504(d) of the 3R Act. (45 U.S.C. § 774(d)). Since Section 502(a) of the 3R Act provided that Conrail "shall be subject to the provisions of the Railway Labor Act," the negotiations were conducted in accordance with the mandatory provisions of that statute.

The agreement contained, among other provisions, Rule 62 (App. D at 77a) providing that protected employees would be afforded the benefits provided in Appendix 8 or 9 thereto. The benefits provided in Appendix 8 are those set forth in Title V, which is reproduced in such appendix to the agreement. The provisions of Appendix 9 cover BRAC represented employees in Canada.

Section 2, First of the Railway Labor Act (45 U.S.C. § 152, First) requires Conrail to exert every reasonable effort to make and maintain agreements and settle disputes with respect thereto. The Section reads as follows:

> It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonably effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees.

Section 2, Seventh of the Railway Labor Act (45 U.S.C. § 152, Seventh) prohibits Conrail from revising or terminating its agreements except in accordance with the provisions of the Railway Labor Act. The Section reads as follows:

> No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its em-

> ployees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 5 of this Act.

The mandatory provisions for revising agreements include notice, negotiation, mediation and the possibility of a Presidential Emergency Board consideration as required by Sections Five, Six, and Ten of the Act (45 U.S.C., §§ 155, 156, 160).

Conrail has taken the position that since the repeal of Title V, it can ignore the obligations of Rule 62 of its collective bargaining agreements thus unilaterally attempting to terminate the agreement in violation of the cited requirements of the Railway Labor Act. Count II of the Complaint seeks declaratory and injunctive relief to prevent a unilateral termination thereof by Conrail in clear violation of the statutory commands of the Railway Labor Act cited above.

The Special Court decision dismisses Count II on the merits on the ground that "Congress' subsequent repeal of Title V superseded the terms incorporated by that contract" (page 9). However, Section 1144 of NERSA, quoted in full on page 4, *supra*, repealing Title V, makes no reference to any protective obligations of Conrail under collective bargaining agreements. It is a long established principle of statutory interpretation that repeals by implication are not favored and legislative intent must be clear and manifest. *Watt* v. *Alaska*, 451 U.S. 259 (1981); *Allen* v. *McCurry*, 449 U.S. 90 (1980).

Nor is a prior decision of the Special Court in *United Transportation Union* v. *Conrail*, 535 F.Supp. 697, *cert. denied sub nom. Cannon* v. *Consolidated Rail Corporation*, 457 U.S. 1133 (1982), relied upon in the decision below (App. H at 93a) applicable to the issue now before the Court. That case involved a question of whether

provisions of Section 702 of NERSA giving Conrail authority to terminate certain employees and refuse to fill vacancies applied where refusal to fill a vacancy would be inconsistent with a collective bargaining agreement. That issue is wholly unrelated to the question of whether Congress struck down Rule 62 of the BRAC agreement, imposing on Conrail, as distinguished from the United States, contractual obligations, when it repealed the federal obligations set forth in Title V. Such issue turns solely on an interpretation of the repealing provision of NERSA.

The decision below also asserts (App. H at 94a) that the repeal of Title V covers Rule 62, because the latter is inconsistent with the protections contained in NERSA and cites the Conference Report on the legislation that "any employee protection contained in collective bargaining agreements is replaced by this protection." The difficulty with this argument is that the NERSA statute does not do that. When Congress passed the 3R Act, it included in Section 504(a) a specific *proviso*, cited above at page 13, that Title V protections superseded those found in the Washington Agreement and in other job stabilization agreements. No such NERSA provision is cited by the court below with respect to existing protective agreements. Thus, having considered the problem when the 3R Act was passed, the Congress specifically provided for the superseding of existing agreement protections and in the enactment of NERSA it did not do so. The situation, therefore, gets back to the fact that there is no specific repeal of Rule 62 or of any other collective bargaining protection so that a repeal must be implied. The cases cited at page 23, *supra*, from this Court reject repeal by implication. The conclusion of an intent not to repeal such protections is further strengthened by the failure of Con-

gress in NERSA to utilize the method that it had previously used to accomplish that result. This is particularly true when the subject matter is the voiding of a collective bargaining agreement which should not be implied in the absence of specific superseding language as in Section 504(a) of the 3R Act.

CONCLUSION

For the reasons enumerated above, a Writ of Certiorari should be issued by this Court to review the judgment and opinion of the Special Court and upon such review reverse that judgment.

Respectfully submitted,

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January 12, 1984

APPENDIX

APPENDIX A

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
400 First Street NW
Washington, DC 20001,

Plaintiff,

v.

UNITED STATES OF AMERICA
and
CONSOLIDATED RAIL CORPORATION,
Six Penn Center Plaza
Philadelphia, PA 19107,

Defendants.

COMPLAINT OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR DECLARATORY AND PERMANENT INJUNCTIVE RELIEF

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 45 U.S.C. § 1105, as amended, which provides, in pertinent part:

> "(a) Notwithstanding any other provision of law, the special court shall have original and exclusive jurisdiction over any civil action—
>
> (1) for injunctive, declaratory, or other relief relating to the enforcement, operation, execution, or interpretation of any provision of or amendment made by

this subtitle, or administrative action taken thereunder to the extent such action is subject to judicial review;"

2. Additionally, this action is filed pursuant to 28 U.S.C. § 2201 since this is an actual controversy among the parties over which this Court has jurisdiction, thereby empowering this Court to declare the rights and duties of the parties with regard to each other.

PARTIES

3. Plaintiff Railway Labor Executives' Association [hereinafter, "RLEA"] is an unincorporated association with which are affiliated the chief executive officers of all of the standard national and international railway labor unions in the United States. The organizations whose chief executive officers are members of the RLEA are listed below.

American Railway and Airway Supervisors Association, Division of BRAC
American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood Railway Carmen of the United States and Canada
Hotel & Restaurant Employees & Bartenders International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
International Longshoremen's Association
International Organization of Masters, Mates and Pilots
National Marine Engineers Beneficial Association
Railroad Yardmasters of America

Sheet Metal Workers' International Association
Seafarers International Union of North America
Transport Workers Union of America
United Transportation Union

RLEA maintains its headquarters at 400 First Street, NW, Washington, DC 20001. The organizations whose chief executive officers are members of the RLEA represent employees of the Consolidated Rail Corporation [hereinafter, "Conrail"]. Said organizations are parties to collective-bargaining agreements with Conrail governing rates of pay, rules, and working conditions of Conrail employees represented by said organizations, which were negotiated and are maintained in accordance with the requirements of the Railway Labor Act (45 U.S.C. § 151, *et seq.*) and the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 771, *et seq.*).

4. Defendant Conrail is a corporation organized and existing under the laws of the State of Pennsylvania with principal offices in Philadelphia, Pennsylvania, and also organized pursuant to authority contained in Section 301 of the Regional Rail Reorganization Act of 1973 [hereinafter, "3R Act"] (45 U.S.C. § 741), which is engaged in the transportation of passengers and property for hire in interstate and foreign commerce subject to the provisions of the Interstate Commerce Act (49 U.S.C. § 10101, *et seq.*) and is a "carrier" within the meaning of that term as defined in the Railway Labor Act (45 U.S.C. § 151, *et seq.*). Conrail is an integral part of the nationwide railway system of the United States and is governed by the provisions of the Interstate Commerce Act (49 U.S.C. § 10101, *et seq.*) and the Railway Labor Act (45 U.S.C. § 151, *et seq.*) and connects and interchanges freight and passengers with other railroads engaged in interstate commerce.

STATEMENT OF CLAIMS FOR RELIEF

COUNT I

5. Title V of the Regional Rail Reorganization Act of 1973 [hereinafter, "3R Act"]provided for employee protection for a

class of employees defined in §§ 501(2) and 501(3) of said Act to wit:

> (2) "employee of a railroad in reorganization" means a person who on the effective date of a conveyance of rail properties of a railroad in reorganization to the Corporation or any subsidiary thereof, to the National Railroad Passenger Corporation, to an acquiring railroad, or to a State pursuant to section 208(d)(2) of this Act has an employment relationship with either said railroad in reorganization or any carrier (as defined in parts I and II of the Interstate Commerce Act) which is leased, controlled, or operated by the railroad in reorganization (except a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization), but does not include a president, vice president, treasurer, secretary, comptroller, and any other person who performs functions corresponding to those performed by the foregoing officers;
>
> (3) "protected employee" means any employee of—
>
> (A) an acquiring or selling railroad who is adversely affected by a transaction;
>
> (B) the Corporation who, immediately preceding such employment by the Corporation, was employed by a selling railroad and who is adversely affected by the sale of rail properties to the Corporation pursuant to an offer designated under section 206(c)(2) of this Act;
>
> (C) a railroad in reorganization in the region; and
>
> (D) a railroad who is adversely affected by a supplemental transaction under section 305 of this Act or by a project recommended under section 206(g) of this Act;
>
> who, in any such case, has not reached age 65 on the effective date of this Act;

6. Conrail was required to offer employment to such employees and to apply the protective provisions of Title V to said employees by Section 502(b) of the 3R Act.

7. Section 505 of the 3R Act spelled out the employee protections for said class of employees, which included: that protected employees would not be placed in a worse position

with respect to compensation, fringe benefits, rules, and working conditions during the protective period (Section 505(a)); that a monthly displacement allowance be paid to protected employees for any calendar month in which said employees were deprived of employment or adversely affected with regard to compensation (Section 505(b)); that the duration of the displacement allowance for such employees be until attainment of age 65 for any protected employee with five (5) or more years of service on the effective date of the Act (Section 505(c)); that such protected employees be subject to transfer by Conrail upon certain conditions (Section 505(d)); that protected employees tendered an offer by Conrail who accepted said offer were entitled to a separation allowance by Sections 505(e) and 505(f); that moving expense benefits were provided for protected employees by Section 505(g); and, that non-contract employees were entitled to protections contained in Section 505(i).

8. The method of computation of the monthly displacement allowances was changed by the Staggers Rail Act of 1980, 94 Stat. 1895, 1948, but otherwise the protections of Title V remained intact.

9. In hearings before the Surface Transportation Subcommittee of the Committee on Commerce of the United States Senate held November 15, 16, and 19, 1973, W. Graham Claytor, then President of the Southern Railway System, testified with regard to the employee protective benefits and other contractual rights that railroad employees on railroads in reorganization in the Northeast were relinquishing in return for the protections prescribed in Title V of the 3R Act. Mr. Claytor stated, in part:

> Second, in this particular instance we are dealing with employees who have that protection, lifetime attrition protection under the terms of the . . . agreement that was entered into in connection with the New York Central and Pennsylvania Merger. If we do not give comparable protection, something is being taken away from those employees—*a contract right* which they now have.

It was perfectly clear that it would be utterly impossible to reach any kind of agreement that would not result in strikes, dislocation, everything else, unless this were recognized. (emphasis supplied).

Hearings at 969.

We have been concentrating in this colloquy on the attrition, the guarantee of a job until retirement age for these people, but I would like to mention I think we should keep in mind that this agreement has something in it that is favorable to management, favorable to the new-corporation, that has never been, so far as I know, in any labor agreement: *That is the right to trasfer [sic] people within their craft outside of their seniority district.*

If a job opens up in another place, and if the man doesn't take that, then he is required to resign and take severance pay or go on unpaid furlough.

Now, this is terribly important as a practical matter because it means that attrition will work much, much faster. You don't have to wait for a job to open where you are. A job opens up anywhere on the system, and the man can be assigned to it.

Work can also be transferred freely. That is, you may close a shop here and concentrate all the work in another shop there.

These two things are very important, and they were the principal items that we felt, principal reasons that we felt this agreement made that really made this new corporation a viable thing and that we though would hold the money down within the limites stated.

I think those are very important advances that were made in this agreement. (emphasis supplied)

Hearings at 972-73.

10. Stephen Ailes, President and Chief Executive Officer of the Association of American Railroads testified at page 971 of said Hearings: "The thing that makes this case *sui generis* is that Lewis Sanders [obviously a reference to the Luna-Saunders Penn Central merger protection Agreement] guaranteed the rights these employees already have when this particular situation came about."

11. Historically, railroads have accepted employee protection as a cost of effecting change in the industry. In light of that history, no railroad would have attempted to deny employee protection in consummating the types of transactions necessitated by the passage of the 3R Act of 1973.

12. In 1973 the affected rail employees had extensive preexisting contractual and statutory rights to employee protection. These contractual rights were based on a number of employee protection agreements, such as the Washington Job Protection Agreement and the Penn Central merger protection agreement. The statutory rights were based on the ICC's statutory mandate to protect the interests of rail employees in approving mergers, acquisitions, and abandonments.

13. If the railroads which became part of Conrail had refused to provide adequate employee protection, the unions could have taken a number of steps, including a strike, to prevent the trains from running. Moreover, the tens of thousands of employees who would have been affected would have demanded protection compensation regardless of what union leaders decided to do. Prospective purchasers recognized the certainty of labor unrest. For that reason, prospective purchasers would not have purchased a line until the employee protection issue had been resolved. Additionally, the new corporation (Conrail) was freed from provisions of existing collective-bargaining agreements which prohibited the transfer of work from one railroad to another or from one seniority district to another.

14. It is clear that rail labor played a substantial role in the creation of the legislation which became the 3R Act of 1973. Rail labor had substantial labor protections from a host of previous agreements, including the Penn Central Merger Protection Agreement. In exchange for Title V of the 3R Act of 1973, these employees gave up all of the vested protections which they then had, including those in scope rules of existing collective-bargaining agreements. Moreover, it is apparent that the Congress was well aware of the cooperation of rail

labor in presenting the 3R Act to the Congress at the request of the Department of Transportation by virtue of the testimony of Mr. Claytor and Mr. Ailes. In short, Congress accepted the offer of rail labor (worked out with rail management) of waiving the vested protections to which it was entitled by virtue of longstanding agreements and statutes, as well as the Penn Central Merger agreement, in exchange for inclusion of Title V in the 3R Act. The 3R Act was passed by the Congress with the full knowledge that such was the case.

15. The United States is bound by its contracts as individuals are bound by virtue of the Fifth Amendment of the United States Constitution. *See, Sinking Fund Cases*, 99 U.S. 700 (1879). While Congress is free to reduce gratuities it considers excessive, it is without the power to "reduce expenditures by abrogating contractual obligations of the United States." *Lynch* v. *United States*, 292 U.S. 571, 580 (1934).

The Court in *Lynch* also stated:

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment."
>
> *Id.* at 579.

See also, Perry v. *United States*, 294 U.S. 330, 354 (1935).

16. Conrail employees represented by the RLEA relied to their detriment in giving up all vested labor protections and scope rules to which they would have been entitled in exchange for the promise and eventual passage of the employee protections contained in Title V of the 3R Act.

17. In the Northeast Rail Service Act of 1981 [hereinafter, "NERSA"], the Congress repealed Title V of the 3R Act with all its protections, in § 1144 of NERSA (95 Stat. 669).

18. In so repealing Title V of the 3R Act, Congress violated the Fifth Amendment to the United States Constitution in

violating its contractual promise to the employees to railroads in reorganization in the Northeast to continue the protections afforded by Title V of the 3R Act, for which promise said employees gave up all of their preexisting contractual protections, some of which were more beneficial then those provided by Title V of the 3R Act.

19. Congress replaced Title V with new Title VII of the 3R Act in Section 1143 of NERSA (95 Stat. 661-68) which provides for much less employee protection, and in most cases no protection.

COUNT II

20. Plaintiff RLEA incorporates by reference paragraphs 1-18 above as if fully restated herein.

21. Title V has been incorporated by reference and by appendix in collective-bargaining agreements which exist between Conrail and the various classes and crafts of employees. For example, Rule 62 entitled "Employee Protection" of the agreement existing between Conrail and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes [hereinafter, "BRAC"] states "protected employees will be afforded the benefits as provided in Appendix No. 8 . . ." Appendix 8 contains the provisions of Title V of the 3R Act.

22. Section 6 of the Railway Labor Act (45 U.S.C. § 156), which governs the employment relationship between Conrail and employees represented by constituent members of the RLEA, requires that certain mandatory procedures be followed before any existing collective-bargaining agreements can be changed.

23. Conrail has unilaterally refused to comply with rules of collective-bargaining agreements which incorporate by reference Title V of the 3R Act in violation of §§ 2, First, 2, Seventh, and 6 of the Railway Labor Act (45 U.S.C. §§ 152, First, 152, Seventh, and 156).

WHEREFORE, plaintiff RLEA prays that the Court:

1. Issue a judgment declaring that the action of the Congress in repealing Title V of the 3R Act was unconstitutional as violative of the Fifth Amendment to the United States Constitution, and therefore is null and void;

2. Issue a judgment declaring that Conrail may not unilaterally change any of its collective-bargaining agreements which provide for the labor protections contained in Title V of the 3R Act;

3. Issue an order enjoining enforcement of Title VII of the 3R Act set forth in § 1143 of NERSA (95 Stat. 661-68) and ordering that Title V of the 3R Act remain in full force and effect; and

4. Issue an order enjoining Conrail from violating Sections 2, First, 2, Seventh, and 6 of the Railway Labor Act under the color of Section 1144 of NERSA, and requiring Conrail to honor its collective-bargaining agreements with constituent members of the RLEA which incorporate by reference Title V of the 3R Act.

5. Such other and different relief as may be proper in the premises.

Respectfully submitted,

/s/ Norton N. Newborn
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Date: April 7, 1982

APPENDIX B

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,
Defendants.

ANSWER OF THE UNITED STATES

The United States of America, through its undersigned counsel, in answer to the Complaint filed in the above-styled action hereby admits, denies and answers as follows:

JURISDICTION

1. Paragraph 1 contains conclusions of law to which no response is required. To the extent an answer is deemed necessary, admitted.

2. Paragraph 2 contains conclusions of law to which no response is required. To the extent an answer is deemed necessary, denied.

PARTIES

3. Admitted.

4. Admitted.

COUNT I

5. The allegations of paragraph 5 are admitted to the extent they are consistent with the statutes cited. The Court is respectfully referred to the text of these statutes for a full and complete statement of their contents.

6. The allegations of paragraph 6 are admitted to the extent they are consistent with the statutes cited. The Court is respectfully referred to the text of these statutes for a full and complete statement of their contents.

7. The allegations of paragraph 7 are admitted to the extent they are consistent with the statutes cited. The Court is respectfully referred to the text of these statutes for a full and complete statement of their contents.

8. The allegations of paragraph 8 are admitted to the extent they are consistent with the statutes cited. The Court is respectfully referred to the text of these statutes for a full and complete statement of their contents.

9. The allegations of paragraph 9 are admitted only to the extent that W. Graham Claytor testified before the Senate Commerce Committee in 1973 concerning legislation that became the former Title V of the Regional Rail Reorganization Act of 1973 (Rail Act) and that the quotations contained in paragraph 9 are excerpts from that testimony.

10. The allegations of paragraph 10 are admitted only to the extent that Stephen Ailes testified before the Senate Commerce Committee and that the quotation contained in paragraph 10 is an excerpt from that testimony.

11. The first sentence of paragraph 11 is admitted only to the extent that it alleges that, at least since 1933, most common carriers by railroad have accepted some employee protective conditions negotiated with representatives of rail labor in the context of discussions preparatory to, or imposed by Government in connection with approval of, rail mergers, consolidations and other coordinations; otherwise, denied. The second sentence of paragraph 11 is denied.

12. The first sentence of paragraph 12 of the Complaint is denied except to admit that certain employees of railroads in reorganization who later became eligible to receive benefits under Title V of the Rail Act had some rights against the railroads in reorganization with respect to job and/or income

protection and other benefits at the time of legislative consideration of the Rail Act in 1973. The second sentence is denied except to admit that a number of widely disparate employee protective arrangements covered certain of the employees later eligible for benefits under Title V of the Rail Act. The third sentence is admitted to the extent supported by Interstate Commerce Commission Act. The Court is respectfully referred to former Section 5(2)(f) of the Interstate Commerce Act (45 U.S.C. 5(2)(f) (1970) for a full and complete statement of its contents.

13. The first four sentences of paragraph 13 contain speculative allegations to which no response is required. To the extent an answer is deemed necessary, denied. The allegations of the fifth sentence are denied except to admit that Title V of the Rail Act provided certain latitude to the Consolidated Rail Corporation (Conrail) to transfer work from one location to another within the Conrail system and that, on information and belief, certain collective bargaining agreements in effect on the railroads in reorganization restricted transfer.

14. The first sentence of paragraph 14 of the Complaint is denied except to admit that rail labor, among other interested groups, influenced the development of the Rail Act. The second sentence repeats the allegations of paragraph 12; and the Court is respectfully referred to paragraph 12 of this Answer. The remainder of the paragraph contains conclusions of law to which no response is required.

15. The allegations of paragraph 15 contain conclusions of law to which no response is required. To the extent an answer is deemed necessary, denied.

16. Denied.

17. Denied except to admit that Section 1144 of the Northeast Rail Service Act, Subtitle E, Title XI, Pub. L. No. 97-35 (NERSA) repealed Title V of the Rail Act, effective September 1, 1981. This Court is respectfully referred to NERSA for a full and complete statement of its contents.

18. Paragraph 18 contains conclusions of law to which no response is required. To the extent an answer is deemed necessary, denied.

19. Denied except to admit that NERSA enacted a new Title VII of the Rail Act which provides for certain protections for certain employees of Conrail who were previously protected by Title V. This Court is respectfully referred to Section 1143 of NERSA (Title VII of the Rail Act, as amended) for a full and complete statement of its contents.

COUNT II

20. The United States incorporates by reference its responses to paragraphs 1 through 18 above as if fully restated herein.

21. Denied except to admit that the text of Title V as revised through February 5, 1976 was reprinted as an appendix to the agreement between Conrail and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees of April 27, 1979 and was referred to in Rule 62 thereof.

22. The United States admits only that the Railway Labor Act (45 U.S.C. 151 *et seq.*) prescribes certain procedures governing collective bargaining in the railroad industry. The Court is respectfully referred to the text of the Act for a full and complete statement of its contents.

23. Denied.

The United States specifically denies all of the allegations of the Complaint not otherwise answered.

SEPARATE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted,

J. PAUL MCGRATH
Assistant Attorney General
DENNIS G. LINDER

/s/ C. Max Vassanelli
C. MAX VASSANELLI

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OF COUNSEL:

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400 Seventh Street, S.W.
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APPENDIX C

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
400 First Street, N.W.
Washington, D.C. 20001

Plaintiff,

v.

UNITED STATES OF AMERICA,

and

CONSOLIDATED RAIL CORPORATION
Six Penn Center Plaza
Philadelphia, PA 19107

Defendants.

ANSWER OF DEFENDANT CONSOLIDATED RAIL CORPORATION

Defendant, Consolidated Rail Corporation (hereinafter "Conrail"), by its undersigned attorneys, hereby answers the averments contained in the Plaintiff's Complaint in the above-entitled action, in accordance with the numbered paragraphs thereof, as follows:

1. Defendant admits that this Court has jurisdiction of this action to the extent consistent with of the Regional Rail Reorganization Act of 1973, as amended, by § 1152 of the Northeast Rail Service Act of 1981.

2. Defendant admits that pursuant to 28 U.S.C. § 2201 this Court is empowered to declare the rights and duties of the

parties in relation to each other, to the extent the Court has subject matter jurisdiction.

3. Defendant admits the averments of paragraph 3 on the basis of information and belief.

4. Admitted.

5,6,7. The allegations of paragraphs 5, 6, and 7 are admitted to the extent that they are consistent with the statute cited, Title V of the Regional Rail Reorganization Act of 1973, § 501 *et seq.* The Court is respectfully referred to the text of that statute for a full and complete statement of its contents.

8. The allegations of paragraph 8 are admitted to the extent they are consistent with the statute cited, the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980). The Court is respectfully referred to the text of that statute for a full and complete statement of its contents.

9,10. Defendant admits to the existence of the statements recorded in the legislative history of the Regional Rail Reorganization Act of 1973. The Court is respectfully referred to the legislative history of the Act, specifically the cited Hearings Before the Surface Transportation Subcommittee of the Committee on Commerce of the United States Senate, for a full and complete statement of the contents of the legislative history.

11. Paragraph 11 contains speculative and conclusory statements to which no response is required. To the extent an answer is deemed necessary, the allegations are denied.

12. Defendant admits that in 1973, employees of Conrail's predecessor railroads were covered under provisions of contractual employee protection agreements adopted pursuant to statute. The Court is respectfully referred to the text of such contracts for a full and complete statement of their contents.

13. Paragraph 13 contains speculative and conclusory statements to which no response is required. To the extent an answer is deemed necessary, the allegations are denied.

14. Defendant admits the allegations of the first and second sentences of paragraph 14. Defendant denies the remaining allegations of paragraph 14 as conclusions of law.

15. Paragraph 15 contains conclusions of law to which no response is required. To the extent an answer is deemed necessary, the allegations are denied.

16. Denied.

17. The allegations of paragraph 17 are admitted to the extent they are consistent with the Northeast Rail Service Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 (1981). The Court is respectfully referred to the text of that statute for a full and complete statement of its contents.

18. Denied.

19. The allegations of paragraph 19 are admitted to the extent they are consistent with the provisions of the Northeast Rail Service Act of 1981. The Court is respectfully referred to the text of that statute for a full and complete statement of its contents.

20. Defendant's answers to paragraphs 1-19 are incorporated by reference.

21. The allegations of paragraph 21 are admitted to the extent they are consistent with the terms of the collective bargaining agreement described. The court is respectfully referred to those documents for a full and complete statement of their contents.

22. The allegations of paragraph 22 are admitted to the extent they are consistent with the Railway Labor Act. The Court is respectfully referred to the text of that statute for a full and complete statement of its contents.

23. Denied.

AFFIRMATIVE DEFENSE

The Plaintiff fails to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Harry A. Rissetto
HARRY A. RISSETTO
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5084

/s/ Dennis A. Arouca
DENNIS A. AROUCA
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1138 Six Penn Center Plaza
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Attorneys for Consolidated Rail Corporation

OF COUNSEL:
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Washington, D.C. 20036
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APPENDIX D

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
400 First Street, N.W.
Washington, D.C. 20001

Plaintiff,

v.

UNITED STATES OF AMERICA,

and

CONSOLIDATED RAIL CORPORATION,
Six Penn Center Plaza
Philadelphia, PA 19103,

Defendants.

STIPULATION

The parties hereto, by their undersigned counsel, for purposes of this action only, hereby stipulate and agree that the following facts shall be taken as true, including a stipulation as to the authenticity of the documents attached hereto, with the proviso that any party may object in brief and argument on materiality or relevancy grounds to any of the facts stipulated or documents authenticated.

1. That the "Agreement for Protection of Employees in the Event of Merger of Pennsylvania and New York Central Railroads" among the Pennsylvania Railroad Company, New York Central Railroad Company, and Brotherhood of Railroad Trainmen dated November 16, 1964, effective on and after January 1, 1964, with pertinent appendices attached thereto, attached hereto as Exhibit A, is true and authentic. The same

or similar type of agreement was reached by the Pennsylvania Railroad Company and New York Central Railroad Company with representatives (who are constituent members of plaintiff) or all of the other crafts and classes of employees involved in said merger.

2. That the "Agreement for Protection of Employees of Erie-Lackawanna Railroad Company Following Merger of Said Company Into Erie Lackawanna Railway Company" between the Erie Lackawanna Railroad Company and plaintiff herein, on behalf of its constituent labor organizations, dated August 19, 1968, effective on and after April 1, 1968, with the attached "Agreement Effective January 10, 1962, and Four Attached Memoranda of Understanding for Protection of Employees in Event of Approval of Merger and Related Applications Filed by Norfolk and Western Railway Company and Other Carriers in I.C.C. Finance Docket Nos. 21510, 21511, 21512, 21513, and 21514," attached hereto as Exhibit B, is true and authentic.

3. That certain employees of Conrail, represented by constituent members of plaintiff, were covered by the agreements embodied in Exhibits A and B attached hereto, later were eligible for benefits under Title V of the Regional Rail Reorganization Act of 1973, and later were eligible for benefits under Title VII of the Regional Rail Reorganization Act, as amended by the Northeast Rail Services Act of 1981.

4. That the "Agreement Between Consolidated Rail Corporation and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees - Clerks" signed April 27, 1979, effective on and

after July 1, 1979, with attached appendices, enclosed herewith as Exhibit C, is true and authentic.

For the Railway Labor Executives' Association:

/s/ Clinton J. Miller, III
CLINTON J. MILLER, III
Highsaw & Mahoney, P.C.
Suite 210
1050 Seventeenth St., N.W.
Washington, D.C. 20036

For the United States of America:

/s/ C. Max Vassanelli
C. MAX VASSANELLI
U.S. Department of Justice
Room 3730
9th & Pennsylvania Ave., N.W.
Washington, D.C. 20530

For the Consolidated Rail Corporation:

/s/ Harry A. Rissetto
HARRY A. RISSETTO
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

EXHIBIT A

AGREEMENT FOR PROTECTION OF EMPLOYEES IN EVENT OF MERGER OF PENNSYLVANIA AND NEW YORK CENTRAL RAILROADS

WHEREAS, The Pennsylvania Railroad Company and the New York Central Railroad Company (hereinafter sometimes referred to individually as Pennsylvania and Central or collectively as the Carriers) have filed a joint application with the Interstate Commerce Commission (hereinafter called the Commission) for authority under Section 5(2) of the Interstate Commerce Act to merge the properties and franchises of Central into Pennsylvania for ownership, management, and operation of the properties now separately owned and operated, and for certain other authority incidental thereto, as more fully described in Finance Dockets Nos. 21989 and 21990;

AND WHEREAS, the Joint Agreement of Merger dated January 12, 1962, provides that the corporation to survive the merger will be a corporation of the Commonwealth of Pennsylvania with its name changed to "Pennsylvania-New York Central Transportation Company" (hereinafter referred to as the merged company) which will assume and be bound by the collectively bargained labor agreements of both Pennsylvania and Central;

AND WHEREAS, it is the intent and purpose of Pennsylvania and Central, in the event of approval of their joint application, to effectuate the merger through the unification, coordination and consolidation of their separate facilities, all of which will or may have adverse effect upon employes represented by the labor organization parties hereto;

AND WHEREAS, the labor organization signatory hereto is the authorized and recognized representative of certain of the employes of Pennsylvania and Central and has intervened on behalf of said employes through the Railway Labor Executives' Association in opposition to the said merger and related

transactions in proceedings before the Commission, which opposition is not waived by this Agreement;

AND WHEREAS, Section 5(2)(f) of the Interstate Commerce Act provides:

> "As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employes affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employes of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employe pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employe was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employes may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employes."

AND WHEREAS, pursuant to the provisions of the Railway Labor Act, a amended, and in accordance with the last sentence of Section 5(2)(f) of the Interstate Commerce Act above quoted, the parties signatory hereto have reached agreement respecting the protection to be afforded employes of the railway carriers involved or who may become involved in the aforesaid applications and transactions;

NOW, THEREFORE, it is mutually agreed as follows:

Section 1.

(a) If, notwithstanding the opposition of the said labor organization, the Commission should approve the said merger, then upon consummation thereof the provisions of the Wash-

ington Job Protection Agreement of 1936 (a copy of which is attached hereto as Appendix A) shall be applied for the protection of all employes of Pennsylvania and Central as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated who may be adversely affected with respect to their compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto incident to approval and effectuation of said merger; provided, however, that in addition to benefits set forth in the said Washington Job Protection Agreement, it is further agreed as follows:

(b) On the date the said merger of Central into Pennsylvania is consummated the merged company will take into its employment all employes of Pennsylvania and Central as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated who are willing to accept such employment, and none of the present employes of either of the said Carriers shall be deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment.

For the purposes of this Agreement the term "present employes" is defined to mean all employes of Pennsylvania or Central who render any compensated service between the effective date of this Agreement and the date the merger is consummated (both dates inclusive) provided, however, that in the event two or more employes, including those on leave-of-absence, have employment rights to the same job, said employes will be protected hereunder and their employment preserved only to the extent of their individual equities in said job; provided further, that the merged company shall also take over, assume and continue the employment relationship of all employes on furlough or leave-of-absence and preserve their rights and equities as they may exist as of the effective date of this Agreement or subsequent thereto up to and including the

date the merger is consummated subject, however, to the transfer of work and employes as hereinafter set forth.

Pennsylvania and Central agree to furnish rosters (which shall be attached as Appendix B to this Agreement) of all employes entitled to preservation of employment, compensation, and fringe benefits as of the effective date of this Agreement, and also separate rosters (which shall be attached as Appendix C) of all employes on furlough or leave-of-absence, each of which rosters shall also set forth the Carrier by which the employes are employed and the labor organization party to this Agreement representing such employes. The Carrier will furnish, upon request, information specified in Appendix E to this Agreement. Pennsylvania and Central further agree that the said rosters are subject to revision as necessary to include any employes to be added or deleted from said rosters between the effective date of this Agreement and the date the merger is consummated.

An employe shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements (including lay-offs during the Miners' Holiday and the Christmas season), provided, however, that employes furloughed due to seasonal requirements shall not be furloughed in any twelve-month period for a greater period than they were furloughed during the twelve months preceding the date the merger is consummated; provided, further, however, that in the event of a decline in the merged company's business in excess of 5% in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period compared with the average of the same period for the years 1962 and 1963, a reduction in forces in the craft represented by the

organization signatory hereto may be made at any time during the said 30-day period below the number of employes entitled to preservation of employment under this Agreement to the extent of one percent for each one percent the said decline exceeds 5%. The average percentage of decline shall be the total of the percent of decline in gross operating revenue and percent of decline in net revenue ton miles divided by two. Advance notice of any such force reduction shall be given as required by the current schedule Agreements of the organization signatory hereto. Upon restoration of the merged company's business following any such force reduction employes entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

Notwithstanding other provisions of this Agreement, the merged company shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed. When forces have been so reduced and thereafter operations are restored employes entitled to preservation of employment must be recalled upon the termination of the emergency. In the event the merged company is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in gross operating revenue and net revenue ton miles resulting therefrom shall not be included in any computation of a decline in the merged company's business pursuant to the provisions of the preceding paragraph.

In consideration of the foregoing employe benefits the merged company shall be entitled to transfer the work of the employes protected hereunder throughout the merged or consolidated system and the labor organization will, subject to provisions contained in the Memorandum of Understanding attached hereto as Appendix F, enter into implementing

agreements providing for the trasnfer and use of employes and allocation or rearrangement of forces made necessary by changes for which protection is herein provided and the employes, their organization and the Carriers will cooperate to that end. The implementing agreements to be negotiated with respect to the transfer and use of employes and allocation or rearrangement of forces shall enable the merged company to transfer such employes and rearrange forces without liability to furloughed employes who may be affected by such transfer.

None of the provisions of this Agreement are applicable to employes temporarily hired for work on non-recurring projects between the effective date hereof and the date of the consummation of the merger.

(c) Without limiting the provisions of subsection (b) hereof, the merged company further agrees to maintain work forces represented by the organization signatory hereto in such manner that force reductions below the established base as defined herein shall not exceed five percent (5%) per annum. The established base shall mean the total number of employes in the craft represented by the organization signatory hereto entitled to preservation of employment as of the date of consummation of the merger.

(d) The merged company will take over and assume all contracts, schedules and agreements between Pennsylvania, Central, and the labor organization signatory hereto concerning rates of pay, rules, working conditions and fringe benefits in effect at the time of consummation of the said merger and will be bound by the terms and provisions thereof, subject to changes in accordance with the provisions of the Railway Labor Act, as amended, in the same manner and to the same extent as if the merged company had been a party thereto.

(e) For purposes of this Agreement, Section 13 of the Washington Job Protection Agreement is deleted and the following provision inserted in lieu thereof:

In the event any dispute or controversy arises between Pennsylvania, Central, or the merged company and the labor

organization signatory to this Agreement with respect to the interpretation or application of any provision of this Agreement or of the Washington Job Protection Agreement (except as defined in Section 11 thereof) or of any implementing agreement entered into between the merged company and the labor organization party hereto pertaining to the said merger or related transactions, which cannot be settled by said Carriers and the labor organization involved within thirty days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within ten days, select a member of the arbitration committee and the members thus chosen shall endeavor to select a neutral member who shall serve as Chairman, in which event the compensation and expenses of the Chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the members designated by the parties be unable to agree upon the appointment of the neutral member within ten days, either party may request the National Mediation Board to appoit the neutral member, whose compensation and expenses shall then be paid in accordance with existing law. If any party fails to select its member of the arbitration committee within the prescribed time limit, the representative of such party signatory to this Agreement or his designated representative shall be deemed to be the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. The decision of the majority of the arbitration committee shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members on the arbitration committee, the decision of the neutral member shall be final and binding.

Section 2.

In the event merger or control of other carriers not now involved in the aforesaid merger proceedings sould be ordered by the Commission as a condition of its approval of the pending transaction, this Agreement shall be subject to amendment by the parties so as to provide the employe benefits set forth in Section 1 hereof to the employes of any such carrier controlled by or merged into the merged company.

Section 3.

The foregoing represents an agreed settlement of protection of the interest of the employes of Pennsylvania and Central in the said merger. Said agreed settlement of protective benefits is made on behalf of said employes by their authorized and recognized bargaining representative signatory hereto pursuant to Section 5(2)(f) of the Interstate Commerce Act and applicable provisions of the Railway labor Act, as amended, and shall become applicable only in the event of approval by the Commission of the proposed merger and consummation thereof. It shall be considered and construed as a separate agreement between Pennsylvania, Central and the labor organization signatory hereto.

Section 4.

It is understood and agreed that the provisions of this Agreement shall be for the benefit only of the employes represented by the labor organization party hereto.

Section 5.

The effective date of this Agreement shall be January 1, 1964.

IN WITNESS WHEREOF the parties to this Agreement have hereunto executed the same by and through their duly authorized representative this 16th day of November, 1964.*

*This agreement was signed by the Pennsylvania Railroad Company, the New York Central Railroad Company and by officers of the Brotherhood of Railroad Trainmen. The signatures are not reproduced in the interest of space.

ATTACHMENTS:

Appendix A—Washington Job Protection Agreement.

Appendix B—Rosters of employes represented by the labor organization party to the Agreement on each of the Carriers involved entitled to preservation of employment, compensation and fringe benefits as of the effective date of this Agreement or subsequent thereto up to and including date merger is consummated.

Appendix C—Rosters of all employes on furlough or leave-of-absence, setting forth Carrier by which employe is employed and labor organization party to this Agreement representing such employe.

Appendix E—Memorandum of Understanding re employment information to be furnished upon request and computations respecting compensation due operating employes under Agreement.

Appendix F—Memorandum of Understanding re moving expenses, and lump sum separation allowances.

Appendix G—Memorandum of Understanding re election to take furlough

Appendix H—Memorandum of Understanding re official, supervisory and fully excepted personnel.

Appendix I—Memorandum of Understanding involving employes with exclusive road and yard seniority.

Appendix J—Letter of Intent.

APPENDIX E

MEMORANDUM OF UNDERSTANDING RE EMPLOYMENT INFORMATION TO BE FURNISHED UPON REQUEST AND COMPUTATONS RESPECTING COMPENSATION DUE OPERATING EMPLOYES UNDER AGREEMENT

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employes in Even of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

Upon request the merged company will furnish the operating signatory organization, for any employe appearing on the rosters in Appendices B and C, information respecting his current rate of pay, compensation paid and hours worked during a base period comprised of the last twelve (12) months in which he performed compensated service immediately preceding May 16, 1964. All elements of compensation received from the merged company (including vacation pay, arbitraries, pay for time lost and so forth), but excluding payments made on account of personal injuries when such payments are for reasons other than time lost, will be included in determining compensation referred to below.

For purposes of determining whether, or to what extent, such an employe has been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve. If his compensation in his current position is less in any month (commencing with the first month following the date of consummation of the merger) than his average base period compensation (adjusted to include subsequent general wage increases), he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average time paid for during the base period, but he shall be compensated in addition thereto at the rate of the position

filled for any time worked in excess of the time paid for during the base period; provided, however, that in determining compensation in his current position the employe shall be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the working agreement and which does not require a change in residence.

Employes not entitled to preservation of employment but entitled to the benefits of the Washington Job Protection Agreement pursuant to the provisions of Section 1(a) of the Protective Agreement shall be entitled to compensation computed in accordance with the provisions of said Washington Job Protection Agreement.

APPENDIX F

MEMORANDUM OF UNDERSTANDING RE MOVING EXPENSES AND LUMP SUM SEPARATION ALLOWANCES

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

In the case of any transfers or rearrangement of forces for which an implementing agreement has been made, any employe entitled to protection under the aforesaid Protective Agreement who is requested by the merged company pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer or to resign and accept a lump sum separation allowance in accordance with the following provisions:

If the employe elects to transfer to the new point of employment requiring a change of residence, such transfer and change or residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of five hundred dollars ($500) and six working days instead of the "two working days" provided by Section 10(a) of said Agreement.

If the employe elects to resign in lieu of making the requested transfer as aforesaid, he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force

reductions permitted to be made under the Protective Agreement shall be in addition to the number of employes who resign to accept the separation allowance herein provided.

This Memorandum of Understanding is applicable to the employes represented by the organization signatory to the said Agreement of which it is a part and supersedes all existing agreements which may be in conflict herewith.

APPENDIX G

MEMORANDUM OF UNDERSTANDING RE ELECTION TO TAKE FURLOUGH

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

An employee entitled to protection who is displaced as a result of any change for which protection is herein provided may elect to go on furlough in accordance with existing rules or practices but shall not, while so furloughed, be entitled to any money or other allowance or protection provided under the Agreement of which this Appendix is a part.

APPENDIX H

MEMORANDUM OF UNDERSTANDING RE SUPERVISORY AND EXCEPTED PERSONNEL

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

If, subsequent to the effective date of the Protective Agreement, i.e., January 1, 1964, officials, supervisory or fully excepted personnel exercise seniority rights in a craft or class of employes protected under said Agreement, then, during the period such seniority is exercised, such officials, supervisory or fully excepted personnel shall be entitled to the same protection afforded by the said Agreement to employes in the craft or class in which such seniority is exercised, and no employe subject to said Agreement shall be deprived of employment or adversely affected with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, by the return of the official, supervisory, or fully excepted employe to work under the schedule Agreement.

Employes who cannot qualify as "present employes" by reason of being on leave-of-absence for full-time union business, shall have the protection set forth above for official, supervisory or excepted personnel.

APPENDIX I

MEMORANDUM OF UNDERSTANDING INVOLVING EMPLOYES WITH EXCLUSIVE ROAD AND YARD SENIORITY

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

It is understood that an employe having exclusive seniority in yard service will not, unless otherwise agreed to, be required to transfer to a new point of employment in road service and an employe having exclusive seniority in road service will not, unless otherwise agreed to, be required to transfer to a new point of employment in yard service.

APPENDIX J

LETTER OF INTENT

In construing that said Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964, made by and between The Pennsylvania Railroad Company, the New York Central Railroad Company and the labor organization signatory thereto, it is understood and agreed that in the event of any application of Section 1(e) of said Agreement, any dispute with respect to the interpretation or application of any provision of said Agreement or of the Washington Job Protection Agreement includes the provision set forth in Section 1 (b) of said Agreement whereby the labor organization signatory hereto agrees to "enter into implementing agreements providing for the transfer and use of employes and allocation or rearrangement of forces."

Dated this 16th day of November, 1964.*

*The signatures have not been reproduced in the interest of space.

EXHIBIT B

AGREEMENT FOR PROTECTION OF EMPLOYEES OF ERIE-LACKAWANNA RAILROAD COMPANY FOLLOWING MERGER OF SAID COMPANY INTO ERIE LACKAWANNA RAILWAY COMPANY

WHEREAS, the Interstate Commerce Commission, by its Report and Order in Finance Docket No. 21510, dated June 5, 1967, as modified by Orders dated August 10, 1967, September 1, 1967, and March 14, 1968, has authorized the merger of Erie-Lackawanna Railroad Company into Erie Lackawanna Railway Company; and,

WHEREAS, said Report and Orders provide inter alia that "We believe that petitioners' employees should be protected in the same manner as counterpart employees of carriers included in the N&W System and the prior report . . ."; and,

WHEREAS, Erie-Lackawanna Railroad Company was one of the petitioners referred to in the above-quoted passage; and,

WHEREAS, pursuant to terms of said Orders, the merger, authorized as above stated, was effected at 10:25 A.M. E.S.T., on April 1, 1968; and,

WHEREAS, pursuant to the provisions of the Orders of the Interstate Commerce Commissioin aforesaid, and in accordance with the last sentence of Section 5(2)(f) of the Interstate Commerce Act, the parties signatory hereto have reached agreement respecting the protection to be afforded employees of Erie-Lackawanna Railroad Company:

NOW, THEREFORE, it is mutually agreed as follows:

1. That said Erie Lackawanna Railway Company adopts the terms and conditions of the "Agreement For Protection Of Employees In The Event Of Approval Of Merger And Related Applications Filed By Norfolk and Western Railway Company And Other Carriers In Interstate Commerce Commission Finance Dockets Nos. 21510, 21511, 21512, 21513 and 21514", dated April 16, 1962, and retroactively effective January 10, 1962, as modified by (i) the Memoranda of

Understanding between Norfolk and Western Railway Company and parties signatory to the abovementioned agreement, all of which are incorporated in a document appended hereto as Appendix "A", and (ii) (insofar as the terms and conditions of the documents below specified are applicable) the implementing agreements to the above basic Agreement and Memoranda specified in Appendix "B" hereto, both of which appendices and the terms and conditions of the agreements and understandings embraced thereby are incorporated herein by reference.

2. This Agreement shall be effective as of April 1, 1968, and shall afford protection to employees of Erie-Lackawanna Railroad Company who had an employment relationship with said Company on April 1, 1968, except that the term "present employees" in the Agreement of April 16, 1962, shall apply only to those employees in the active service of the Erie-Lackawanna Railroad Company on April 1, 1968. (Note: It is intended that this Section 2 will protect as "present employees" all employees of the Erie-Lackawanna Railroad Company who were on vacation or on off-day on April 1, 1968, or who, on that date, were on leave of absence or sick leave and who later exercise their seniority rights and return to service in positions occupied on April 1, 1968, by employees junior to them. The junior employees thereby affected shall, in turn, be entitled to exercise their seniority rights against employees junior to them and shall be entitled to whatever rights those employees had under this Agreement.)

3. Nothing in this Agreement shall be construed as depriving any employee of any rights, protections or benefits which such employee may have under existing protective agreements, nor shall this Agreement be construed as lessening any rights, protections or benefits which any employee may now be receiving or hereafter be entitled to receive under such agreements, provided that employees shall not be entitled to duplicate benefits under this Agreement and other protective agreements.

IN WITNESS WHEREOF, the parties hereto have set their hands this 19th day of August, 1968.

ERIE LACKAWANNA RAILWAY COMPANY

By/s/ John Fishwick
JOHN FISHWICK
Chairman of the Board

RAILWAY LABOR EXECUTIVES' ASSOCIATION
by Mulholland, Hickey & Lyman
Its Attorneys

/s/ William G. Mahoney, Partner
WILLIAM G. MAHONEY, PARTNER

AGREEMENT

Effective January 10, 1962
and
Four Attached Memoranda of Understanding
For Protection of Employees
in Event of Approval of
Merger and Related Applications
Filed by
NORFOLK AND WESTERN RAILWAY COMPANY
and Other Carriers
in
I.C.C. Finance Docket Nos. 21510, 21511.
21512, 21513, and 21514

AGREEMENT

FOR PROTECTION OF EMPLOYEES IN EVENT OF APPROVAL OF MERGER AND RELATED APPLICATIONS FILED BY NORFOLK AND WESTERN RAILWAY COMPANY and Other Carriers in I.C.C. Finance Docket Nos. 21510, 21511. 21512, 21513, and 21514

I. WHEREAS, a joint application has been filed with the Interstate Commerce Commission (herein called the Commission) in Finance Docket No. 21510 by the Norfolk and Western Railway Company (herein called Norfolk & Western) and the New York, Chicago and St. Louis Railroad Company (herein called Nickel Plate) under Section 5(2) of the Interstate Commerce Act (herein called the Act) for authority to merge the properties and franchises of Nickel Plate into Norfolk & Western, and for certain other authority incident thereto by way of acquisition of control of carriers subsidiary to or affiliated with Nickel Plate and to acquire certain trackage rights;

II. AND WHEREAS, Norfolk & Western has further filed an application with the Commission in Finance Docket No. 21511 under Section 5(2) of the Act for authority (a) to lease the lines of railroad and certain of the franchises and other properties of the Wabash Railroad Company (herein called Wabash); (b) to acquire control of Wabash through stock ownership; (c) to acquire sole or joint control of certain carriers subsidiary to or affiliated with Wabash through lease or stock ownership; and (d) to acquire trackage rights over or joint use of the railroad lines of certain carriers now held by Wabash;

III. AND WHEREAS, Norfolk & Western has further filed an application with the Commission in Finance Docket No. 21512 under Section 5(2) of the Act for authority (a) to purchase from The Connecting Railway Company (now oper-

ated by The Pennsylvania Railroad Company) its line of railroad between Columbus, Ohio and Sandusky, Ohio, together with certain trackage in Columbus; and (b) to acquire trackage rights over certain lines of The Connecting Railway Company in Columbus, Ohio;

IV. AND WHEREAS, other applications have been filed by Norfolk & Western with the Commission under Section 20a of the Act for authority to issue capital stock and assume certain obligations and liabilities of both Nickel Plate and Wabash, all of which is more fully described in Finance Docket Nos. 21513 and 21514;

V. AND WHEREAS, certain other applications may be later filed with the Commission under Section 5(2) of the Act involving the lease, control by or merger into Norfolk & Western of The Akron, Canton & Youngstown Railroad Company and Pittsburgh & West Virginia Railway or transactions may be undertaken by the carriers heretofore named including Nickel Plate and Wabash involving the diversion of Wabash traffic from the Canadian National Railways to Nickel Plate, or the diversion of Nickel Plate passenger operations from the LaSalle Street Station (Rock Island Lines) in Chicago, Illinois, to the Chicago and Western Indiana Railroad (Dearborn Street Station), Chicago, Illinois, which applications or transactions may have adverse effects upon employees represented by the labor organizations parties hereto, the extent of which is not now determinable;

VI. AND WHEREAS, the international and national railway labor organizations signatory hereto are the authorized and recognized representatives of employees of Norfolk & Western, Nickel Plate, Wabash and other carriers involved in the said transactions, and have intervened (through the Railway Labor Executives' Association) in the above-described proceedings before the Commission on behalf of the said employees in opposition to the said merger and related transactions, which opposition is not waived by this Agreement;

VII. AND WHEREAS, Section 5(2)(f) of the Act (49 U.S.C.A. § 5(2)(f)) provides:

> "As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees."

VIII. AND WHEREAS, pursuant to the provisions of the Railway Labor Act, as amended, and in accordance with the last sentence of Section 5(2)(f) of the Interstate Commerce Act above quoted, the parties signatory hereto have reached agreement respecting the protection to be afforded employees of the rail carriers involved in the aforesaid application and transactions.

NOW, THEREFORE, it is mutually agreed as follows:

Section 1.

(a) In the event the Commission should, notwithstanding the opposition of the said labor organizations to these transactions, approve any or all of the aforesaid applications, then, upon consummation thereof, the provisions of the Washington Job Protection Agreement of 1936 (a copy of which is attached hereto) will be applied for the protection of all employees of Norfolk & Western, Nickel Plate, Wabash and (except as

hereafter modified in Section 3) all other carriers involved in each of the transactions designated or described in this Agreement, provided the applications or transactions mentioned therein are consummated, who may be adversely affected with respect to their compensation, rules, working conditions, fringe benefits or rights or privileges pertaining thereto, incident to approval and effectuation of any of said applications or transactions; provided, however, that in addition to the benefits set forth in the said Washington Job Protection Agreement, it is further agreed as follows:

(b) On the date the aforedescribed merger of Nickel Plate into Norfolk & Western is consummated, Norfolk & Western will take into its employment all employees of Nickel Plate as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated who are willing to accept such employment, and none of the present employees of either of the said carriers shall be deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, at any time during such employment. For purposes of this Agreement the term "present employees" is defined to mean all employees except those on furlough or leave of absence as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated; provided, however, in the event two or more employees, including those on leave of absence, have employment rights to the same job, said employees will be protected hereunder and their employment preserved only to the extent of their individual equities in said job; provided, further, that the carrier shall also take over, assume and continue the employment relationship of all employees on furlough or leave of absence and preserve their rights and equities as they may exist as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated subject, however, to the transfer of work and employees as hereinafter set forth. Norfolk & Western agrees to furnish rosters (which shall be attached as

Appendix B to this Agreement) of all employees entitled to preservation of employment, compensation, and fringe benefits as of the effective date of this Agreement, together with their current rates of pay, compensation paid, and hours worked during the preceding twelve months, and also separate rosters (which shall be attached hereto as Appendix C) of all employees on furlough or leave of absence, each of which rosters shall also set forth the carrier by which the employees are employed and the labor organization party to this Agreement representing such employees. Norfolk & Western further agrees that the said rosters are subject to revision as necessary to include any employees to be added or deleted from the said rosters between the effective date of this Agreement and the date the merger is consummated. An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, failure to work due to disability or discipline in accordance with existing rules or agreements or furloughs because of reduction in forces due to seasonal requirements or decline in volume of traffic or revenues. Where employees are furloughed for seasonal requirements they shall not be furloughed in any twelve-month period for a greater period than they were furloughed during the twelve months preceding the date the merger is consummated.

In consideration of the foregoing employee benefits, Norfolk & Western and the other carriers heretofore named shall be entitled to transfer the work of the employees protected hereunder throughout the merged or consolidated system and the labor organizations will enter into implementing agreements providing for the transfer of employees to follow their work, and the employees, their organizations and the carriers will cooperate to that end. The implementing agreements to be negotiated with respect to the transfer of employees shall enable the Norfolk & Western to transfer such employees without liability to furloughed employees who may be affected by such transfer. It is further agreed that implementing agree-

ments will be negotiated to permit the assignment of employees who do not follow their work to other jobs within their craft or class in the same general locality as their point of employment on the date affected whether or not such jobs are within the same seniority district, without liability to furloughed employees who may be affected thereby. Where necessary, employees who do not follow their work will be retrained at carrier expense for other jobs within their craft or class and given a reasonable period in which to qualify therefor. In the event an employee after retraining does not qualify for any such job, he may be assigned to other work in his craft or class for which he is qualified.

(c) Norfolk & Western will take over and assume all contracts, schedules and agreements between Nickel Plate and the labor organizations signatory hereto concerning rates of pay, rules, working conditions and fringe benefits in effect at the time of consummation of the said merger, and will be bound by the terms and provisions thereof, subject to changes in accordance with the provisions of the Railway Labor Act, as amended, in the same manner and to the same extent as if Norfolk & Western had been a party thereto.

(d) For purposes of this Agreement, Section 13 of the Washington Job Protection Agreement is deleted and the following provision inserted in lieu thereof:

In the event any dispute or controversy arises between Norfolk & Western and any labor organization signatory to this Agreement with respect to the interpretation or application of any provision of this Agreement or of the Washington Job Protection Agreement (except as defined in Section 11 thereof) or of any implementing agreement entered into between Norfolk & Western and individual organizations which are parties hereto pertaining to the said merger or related transactions, which cannot be settled by Norfolk & Western and the labor organization or organizations involved within thirty days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consider-

ation and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within ten days, select one member of the arbitration committee and the two members thus chosen shall endeavor to select a third member who shall serve as chairman, in which event the compensation and expenses of the chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the two members be unable to agree upon the appointment of the third member within ten days, either party may request the National Mediation Board to appoint the third member, whose compensation and expenses shall then be paid in accordance with existing law. The decision of the majority of the arbitration committee shall be final and binding.

Section 2.

It is further agreed that all of the provisions set forth in Section 1(a) of this Agreement respecting protection to be afforded employees in the event of merger of Nickel Plate into Norfolk & Western shall except as provided in Section 3 hereof apply and be afforded by Norfolk & Western to employees involved in each of the related transactions heretofore designated or described in this Agreement and, in addition, except as provided in Section 3 hereof the provisions of Section 1(b), (c) and (d) shall apply and be afforded by Norfolk & Western to employees of Wabash, The Akron, Canton & Youngstown Railroad Company and Pittsburgh and West Virginia Railway in the event said line or lines are leased to, controlled by or merged into Norfolk & Western with equal force and effect as if they had been repeated herein with specific reference to each such transaction.

Section 3.

On the effective date of the acquisition by Norfolk & Western of the Sandusky Line presently operated by the Pennsylvania Railroad, approval for which is sought in Finance Docket No. 21512, Norfolk & Western will take into its employment all

employees represented by the labor organizations signatory hereto, except those on furlough or leave of absence as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated, who during such period have exercised employment rights on said Sandusky Line and elect to accept such employment; provided, however, that in the event two or more employees, including those on leave of absence, have employment rights to the same job, said employees will be protected hereunder and their employment preserved only to the extent of their individual equities in said job; and provided further, however, that none of such employees shall be deprived of employment or placed in a worse position with respect to compensation at any time during such employment except that Norfolk & Western shall not be required to provide employment to any such employee during any year, commencing on the effective date of said acquisition, of greater duration than such employee enjoyed on said line in the twelve months' period immediately preceding the effective date of said acquisition. In the event any such employee elects not to accept such employment and in lieu thereof exercises employment rights on the Pennsylvania Railroad, Norfolk & Western agrees to offer employment to the employee of the Pennsylvania Railroad ultimately displaced by the return of said employee, who elects to accept such employment. Pennsylvania Railroad employees accepting such employment shall be entitled to all the protective benefits of this Section provided that Norfolk & Western shall not be required to provide employment or compensation to any such employee during any year, commencing on the effective date of such acquisition, of greater duration or amount than was performed by and paid to the Sandusky Line employee, who caused such Pennsylvania Railroad employee to be displaced, in the twelve months' period immediately preceding the effective date of said acquisition.

Employees protected under this Section shall not be regarded as deprived of employment or placed in a worse position with respect to compensation in case of their resignation,

death, retirement, dismissal for cause in accordance with existing agreements, failure to work due to disability or discipline in accordance with existing rules or agreements or furlough because of reduction in forces due to seasonal requirements as aforesaid or decline in volune of traffic or revenues.

On the effective date of said acquisition, Norfork & Western will take over and assume all contracts, schedules and agreements having application on said Sandusky Line between Pennsylvania Railroad and the labor organizations signatory hereto concerning rates of pay, rules and working conditions, other than provisions therein (1) granting employees employed on said Line seniority or employment rights beyond said Line and (2) granting seniority or employment rights on said Line to employees having employment rights beyond said Line, in effect at the time of acquisition of said Sandusky Line and will be bound by the terms and provisions thereof subject to changes in accordance with the provisions of the Railway Labor Act, as amended, in the same manner and to the same extent as if Norfolk & Western had been a party thereto.

In the event the Commission approves the acquisition by the Norfolk & Western of trackage rights of 2.9 miles over certain lines of The Connecting Railway Company, now operated by The Pennsylvania Railroad Company, authority for which is sought as a part of Finance Docket No. 21512, then, upon consummation thereof, the provisions of the Washington Job Protection Agreement of 1936 will be applied for the protection of all employees of The Pennsylvania Railroad Company represented by the labor organizations parties hereto who may be adversely affected as a result of such acquisition of trackage rights by Norfolk & Western with respect to their rates of pay, rules or working conditions or rights or privileges pertaining thereto.

It is further agreed that Section 1(d) herein shall be applicable to the provisions contained in this Section.

Section 4.

The foregoing represents an agreed settlement of protection of the interests of the employees of the carriers involved in the aforedescribed transactions as represented by their authorized and recognized bargaining representatives signatory hereto, pursuant to Section 5(2)(f) of the Inter state Commerce Act and applicable provisions of the Railway Labor Act, as amended, which shall become applicable only in the event of approval by the Commission and consummation of any or all of the above-designated applications now pending before it. It shall be considered and construed as a separate agreement between Norfolk & Western and each of the labor organizations signatory hereto.

Section 5.

It is understood and agreed that the provisions of this Agreement shall be for the benefit only of employees represented by the labor organizations parties hereto.

Section 6.

The effective date of this Agreement shall be January 10, 1962.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto executed the same by and through their duly authorized representatives this 16th day of April 1962.

Norfolk & Western Railway Company

By /s/ Stuart T. Saunders
STUART T. SAUNDERS
President

American Railway Supervisors Association
By /s/ J. P. Tahney
J. P. TAHNEY

American Train Dispatchers' Association
By /s/ R. C. Coutts
R. C. COUTTS

Brotherhood of Maintenance of way Employes
By /s/ H. C. Crotty
H. C. CROTTY

Brotherhood of Railroad Signalmen
By /s/ Jesse Clark
JESSE CLARK

Brotherhood Railway Carmen of America
By /s/ A. J. Bernhardt
A. J. BERNHARDT

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes
By /s/ Geo. M. Harrison
GEO. M. HARRISON

Brotherhood of Sleeping Car Porters
By /s/ A. Philip Randolph
A. PHILIP RANDOLPH

Hotel & Restaurant Employees & Bartenders International Union
By /s/ Richard W. Smith
RICHARD W. SMITH

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers
By /s/ Russel K. Berg
RUSSEL K. BERG

International Brotherhood of Electrical Workers
By /s/ Thos. Ramsey
THOS. RAMSEY

International Brotherhood of Firemen & Oilers
By /s/ A. E. Matz
A. E. MATZ

Railroad Yardmasters of America
By /s/ M. G. Schoch
M. G. SCHOCH

Sheet Metal Workers' International Association
By /s/ J. W. O'Brien
J. W. O'BRIEN

The Order of Railroad Telegraphers
By /s/ G. E. Leighty
G. E. LEIGHTY

Brotherhood of Locomotive Engineers
By /s/ R. E. Davidson
R. E. DAVIDSON

Brotherhood of Locomotive Firemen & Enginemen
By /s/ H. E. Gilbert
H. E. GILBERT

Order of Railway Conductors & Brakemen
By /s/ Louis J. Wagner
LOUIS J. WAGNER

Brotherhood of Railroad Trainmen
By /s/ W. P. Kennedy
W. P. KENNEDY

International Association of Machinists
By /s/ J. W. Ramsey
J. W. RAMSEY

Railway Employes' Department, AFL-CIO
By /s/ Michael Fox
MICHAEL FOX

Attachments:

Appendix A - Washington Job Protection Agreement

Appendix B - Rosters of employees represented by each labor organization party to the Agreement on each of the carriers involved entitled to preservation of employment, compensa-

tion and fringe benefits as of the effective date of this Agreement or subsequent thereto up to and including date merger is consummated, together with their curent rates of pay, compensation paid, and hours worked during preceding twelve months

Appendix C - Rosters of all employees on furlough or leave of absence, setting forth carrier by which employee is employed and labor organization party to this Agreement representing such employee

MEMORANDUM OF UNDERSTANDING

In construing that certain Agreement for Protection of Employees in Event of Approval of Merger and Related Applications Filed by Norfolk and Western Railway Company and Other Carriers in I.C.C. Finance Docket Nos. 21510, 21511, 21512, 21513 and 21514 effective January 10, 1962, between Norfolk and Western Railway Company and certain national and international labor organizations signatory thereto, it is understood and agreed as follows:

1. Norfolk and Western agrees that it will give advance notice of not less than that required by rules agreement with the organization or organizations involved to, and endeavor to confer with, the bargaining representatives of the employees involved regarding furloughs which it intends to make pursuant to the aforesaid Agreement effective January 10, 1962.

2. The protection afforded by the aforesaid Agreement effective January 10, 1962, includes all Nickel Plate employees, represented by the labor organizations signatory thereto and employed on the date of said Agreement, who may be adversely affected by the construction or operation by Nickel Plate jointly in connection with the Erie-Lackawanna Railroad Company of yard properties and facilities in East Buffalo, New York, or by other transactions requiring ICC approval not designated in said Agreement.

3. If, subsequent to the date the protective benefits of the aforesaid Agreement effective January 10, 1962, become effective, officials, supervisory or excepted personnel exercise seniority rights in a craft or class of employees protected by said Agreement, then, during the period such seniority is exercised, such officials, supervisory or excepted personnel shall be entitled to the same protection afforded by said Agreement to employees in the craft or class in which such seniority is exercised, and no employee subject to said Agreement shall be deprived of employment or adversely affected with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, by the return of the

official, supervisory or excepted employee to work under the rules agreement.

4. It is understood and agreed that the said Agreement does not diminish the rights and benefits of the employees subject to the Agreement of June 18, 1959, or implementing agreements made pursuant thereto in the Norfolk and Western - Virginian merger case except that said Agreement effective January 10, 1962, shall apply with respect to arbitration, retraining of employees and transfer of work.

5. In construing the last paragraph of Section 1(b) of said Agreement concerning the right of the Norfolk & Western to transfer the work of the employees protected under said Agreement, it is clearly understood and agreed that the Norfolk & Western may not transfer any employee (as distinguished from work) to another job within his craft or class beyond the same general locality as his point of employment on the date affected without the consent of his representative and that the refusal of such representative to agree to the transfer of such employee without the employee's consent shall not be subject to arbitration as provided in Section 1(d) of this Agreement.

Dated and made effective January 10, 1962.

Norfolk & Western Railway Company

By /s/ Stuart T. Saunders
STUART T. SAUNDERS
President

American Railway Supervisors Association
By /s/ J. P. Tahney
J. P. TAHNEY

American Train Dispatchers' Association
By /s/ R. C. Coutts
R. C. COUTTS

Brotherhood of Maintenance of Way Employes
By /s/ H. C. Crotty
H. C. CROTTY

Brotherhood of Railroad Signalmen
By /s/ Jesse Clark
JESSE CLARK

Brotherhood Railway Carmen of America
By /s/ A. J. Bernhardt
A. J. BERNHARDT

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes
By /s/ Geo. M. Harrison
GEO. M. HARRISON

Brotherhood of Sleeping Car Porters
By /s/ A. Philip Randolph
A. PHILIP RANDOLPH

Hotel & Restaurant Employees & Bartenders International Union
By /s/ Richard W. Smith
RICHARD W. SMITH

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers
By /s/ Russel K. Berg
RUSSEL K. BERG

International Brotherhood of Electrical Workers
By /s/ Thos. Ramsey
THOS. RAMSEY

International Brotherhood of Firemen & Oilers
By /s/ A. E. Matz
A. E. MATZ

Railroad Yardmasters of America
By /s/ M. G. Schoch
M. G. SCHOCH

Sheet Metal Workers' International Association
By /s/ J. W. O'Brien
J. W. O'BRIEN

The Order of Railroad Telegraphers
By /s/ G. E. Leighty
G. E. LEIGHTY

Brotherhood of Locomotive Engineers
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By /s/ H. E. Gilbert
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Order of Railway Conductors & Brakemen
By /s/ Louis J. Wagner
LOUIS J. WAGNER

Brotherhood of Railroad Trainmen
By /s/ W. P. Kennedy
W. P. KENNEDY

International Association of Machinists
By /s/ J. W. Ramsey
J. W. RAMSEY

Railway Employes' Department, AFL-CIO
By /s/ Michael Fox
MICHAEL FOX

MEMORANDUM OF UNDERSTANDING

In construing that certain Agreement for protection of employees in event of approval of the merger and related transactions filed by Norfolk and Western Railway Company and other carriers in I.C.C. Finance Docket Nos. 21510, 21511, 21512, 21513 and 21514 effective January 10, 1962, between Norfolk and Western Railway Company and certain national and international labor organizations signatory thereto, it is understood and agreed as follows:

Said Agreement shall not be construed or used to prohibit or in any way limit the rights or obligations of the parties to modify or make changes in agreements affecting rates of pay, rules or working conditions to which the Norfolk and Western Railway Company or other carriers named therein are parties and which may be effectuated through concerted or national handling in the railroad industry.

Effective date January 10, 1962.

Norfolk & Western Railway Company

By /s/ Stuart T. Saunders
STUART T. SAUNDERS
President

American Railway Supervisors Association
By /s/ J. P. Tahney
J. P. TAHNEY

American Train Dispatchers' Association
By /s/ R. C. Coutts
R. C. COUTTS

Brotherhood of Maintenance of Way Employes
By /s/ H. C. Crotty
H. C. CROTTY

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By /s/ Jesse Clark
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RUSSEL K. BERG

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By /s/ Thos. Ramsey
THOS. RAMSEY

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By /s/ A. E. Matz
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W. P. KENNEDY

International Association of Machinists
By /s/ J. W. Ramsey
J. W. RAMSEY

Railway Employes' Department, AFL-CIO
By /s/ Michael Fox
MICHAEL FOX

MEMORANDUM OF UNDERSTANDING

In construing that certain Agreement for Protection of Employes in Event of Approval of Merger and Related Applications Filed by Norfolk and Western Railway Company and other Carriers in I.C.C. Finance Docket Nos. 21510, 21511, 21512, 21513 and 21514 effective January 10, 1962, between Norfolk and Western Railway Company and certain national and international labor organizations signatory thereto, it is understood and agreed between the parties signatory hereto as follows:

When it is determined an employe subject to the terms and conditions of said Agreement has been adversely affected because of such merger, the adjustments hereinafter referred to as a "displacement allowance" due him, if any, will be determined by the following formula:

1. The "average monthly compensation" shall be arrived at by taking the total compensation received by the affected employe for the last 12 months in which he performed service, beginning with the month immediately preceding the month in which it has been determined he was adversely affected, (such 12 months being hereafter referred to as the "test period") and then dividing by 12. If the said affected employe's compensation is less in any month because of the merger than the aforesaid "average monthly compensation," he shall be paid the difference less compensation for any time lost on account of absences to the extent he is not available for service under the applicable Schedule rules. If the employe at any time receives compensation in a month equal to or more than the "average monthly compensation", he shall not be entitled to any adjustment.

NOTE - (a) It was understood and agreed that in determining the "average monthly compensation" provided for in this Section, that in any month in which an employe involved was on bona fide furlough for the entire month but performed emergency service to which he did not stand to be called under the rules of the working agreement applicable to the craft or class in which he held

seniority, that such month would not be used as one of the months in such "test period."

(b) It was further agreed that any compensation whatsoever (including vacation pay, arbitrates, pay for time lost, etc.) received from the Railway Company, but excluding payments made on account of personal injuries when such payments are for reasons other than time lost, would be used to reduce the amount of displacement allowances due any employe.

2. After the "average monthly compensation" has been arrived at as set forth in Section 1 hereof, it will always remain an affected employe's "average monthly compensation" except that the percentage of future general wage increases will be added to the said "average monthly compensation" beginning with the date in the month in which such wage increase becomes effective.

EXAMPLE: If it has been determined that an employe's "average monthly compensation" is $500, and a general wage increase of two percent becomes effective, such increase will be added and this will produce a new "average monthly compensation" of $510. The new "average monthly compensation" will be used in calculating the adjustment to be made to employes adversely affected because of such merger on and after the effective date of such increase.

3. When it is determined that an employe is entitled to a displacement allowance under the provisions of this Agreement, it will be made on a monthly basis and same shall be paid as soon as practicable.

4. Claims for employes who contend they are adversely affected by the merger will be made by the individual employe to the officer designated by the Company, with a copy to the Local Chairman of his Organization, within 30 days after the end of each month in which he claims to have been adversely affected, on the form attached hereto and marked Exhibit "A". If the employe's claim is denied by the Company and he desires to appeal the decision, he will submit his claim to said Local Chairman for appropriate handling.

5. This Memorandum of Understanding is applicable to the employes represented by the organizations signatory hereto and supersedes all existing agreements which may be in conflict herewith.

6. This Memorandum of Understanding shall become effective January 10, 1962.

FOR THE NORFOLK AND WESTERN RAILWAY COMPANY:

/s/ Stuart T. Saunders
STUART T. SAUNDERS
President

FOR THE EMPLOYES:

/s/ R. E. Davidson
R. E. DAVIDSON
Brotherhood of Locomotive Engineers

/s/ H. E. Gilbert
H. E. GILBERT
Brotherhood of Locomotive Firemen & Enginemen

/s/ W. P. Kennedy
W. P. KENNEDY
Brotherhood of Railroad Trainmen

/s/ Louis J. Wagner
LOUIS J. WAGNER
Order of Railway Conductors & Brakemen

EXHIBIT "A"

NORFOLK AND WESTERN RAILWAY COMPANY

Location _____
Date _____

Mr. _____
Title: Road Foreman of Engines
Norfolk and Western Railway Company

_____
(Location)

Pursuant to Memorandum of Understanding dated _____ 1962 and effective January 10, 1962, claim is hereby filed on the basis that I have been adversely affected because of the merger of _____ into the Norfolk and Western Railway Company and in accordance with the provisions of the Agreement effective January 10, 1962, am entitled to an adjustment in the compensation received by me for the month of _____, 196__.

The following information is furnished in order that computation may be made of compensation due me, if any, under this claim:

		Gross Amount Earned During Month Affected
1.	Norfolk and Western Railway	$
2.	Any other compensation whatsoever, including vacation pay received from the Railway Company	$
3.	Unemployment payments	$

4. My assignment on January 10, 1962, was _____

_____

5. Basis upon which claim is made _____

_____

During the month of _____ 196__ I was not available for services on the following dates: (State reason why not available)

_____

_____

I hereby certify that the above information is true and correct.

(Signed) _____

Copy to (Occupation) _____

Local Chairman (Date) _____

Statement must be filed within thirty days after end of month

MEMORANDUM OF UNDERSTANDING

For the reason that transfer of train dispatcher work involves considerations not generally applicable to that of other crafts or classes of employes, it is understood and agreed that in the application of the last paragraph of Section 1(b) of the Agreement of April 16, 1962, no train dispatching territory and/or work within the scope of agreements now in effect on the respective carriers involved will be transferred to the jurisdiction of train dispatchers within the scope of the effective Schedule Agreement for the Norfolk & Western Railway, nor will any train dispatching territory and/or work now under the jurisdiction of Norfolk & Western train dispatchers be transferred to the jurisdiction of train dispatchers covered by the Schedule Agreement in effect on other carriers specified in said Agreement, without thirty (30) days' advance written notice to the respective organizations involved and pursuant to implementing agreements thereafter concluded by the parties; provided, however, that if the parties are unable to conclude such an implementing agreement within thirty (30) days from date of initial conference in respect to such a notice, then and in such event the provisions of Section 1(d) of the said Agreement shall be applicable with respect to the conditions of such transfer; provided further, that the right to transfer such work pursuant to Section 1(b) aforesaid shall be accepted by the parties and not be subject to arbitration.

Norfolk & Western Railway Company
By /s/ Stuart T. Saunders
STUART T. SAUNDERS
President

American Train Dispatchers' Association
By /s/ R. C. Coutts
R. C. COUTTS

The Order of Railroad Telegraphers
By /s/ G. E. Leighty
G. E. LEIGHTY

Effective Date January 10, 1962

AGREEMENT
BETWEEN
CONSOLIDATED RAIL CORPORATION
AND
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CLERKS

EFFECTIVE JULY 1, 1979*

*This Appendix only contains certain excerpts of this collective bargaining agreement.

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Protected employees will be afforded the benefits as provided in Appendix No. 8 or No. 9, whichever is applicable.

RULE 63—EFFECTIVE DATE AND CHANGES

This Agreement shall become effective July 1, 1979 and shall continue in full force and effect until changed or modified as provided herein or under the provisions of the Railway Labor Act, as amended.

This Agreement supersedes all previous Agreements, understandings and practices, except as otherwise specified herein or in the appendices, covering employees of the Consolidated Rail Corporation of the craft or class now represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes.

Should either party to this Agreement desire to revise or modify rules contained herein, thirty (30) calendar days' written advance notice containing the proposed changes shall be given and the first conference shall be held within thirty (30) calendar days from date of notice. Further conferences, if necessary, shall be held as promptly as possible and in accordance with the provisions of the Railway Labor Act, as amended.

Pending final settlement of any dispute, these rules shall remain in full force and effect.

Signed at Philadelphia, Pa., this 27th day of April 1979.*

---

*The signatures have not been reproduced in the interest of space.

APPENDIX 8

TITLE V—EMPLOYEE PROTECTION

(Appendix 8 to the Conrail/BRAC collective bargaining agreement is a reproduction of Title V of the 3R Act.)

APPENDIX 9

MEMORANDUM AGREEMENT

This Memorandum Agreement entered into as of this 27th day of April, 1979, by and between Consolidated Rail Corporation ("Company") and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes ("BRAC").

This Memorandum Agreement shall be effective May 1, 1979.

ARTICLE I

The purpose of this Agreement is to provide protection for employees of the Company in the Dominion of Canada employed after March 31, 1965 and on or before January 2, 1974, affected by the permanent abolishment of position(s) subject to the conditions hereinafter set forth.

Nothing in this Agreement shall be construed as depriving employees eligible for benefits hereunder of benefits provided under any other protective agreement; however, there will be no duplication or pyramiding of benefits between this and other agreements.*

---

*(The remainder of this agreement spells out the labor protections in detail.)

APPENDIX E

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

UNITED STATES OF AMERICA

and

CONSOLIDATED RAIL CORPORATION,
Defendants.

MOTION FOR SUMMARY JUDGMENT

Plaintiff Railway Labor Executives' Association [hereinafter, "RLEA"], by undersigned counsel, hereby moves this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to grant summary judgment in its favor on the grounds that there is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law.

In support of this motion, the Court is respectfully referred to the accompanying memorandum of points and authorities, together with the Stipulation of Facts filed with the Court on

August 9, 1983, and other matters within the scope of judicial notice.

Respectfully submitted,

/s/ Norton N. Newborn
NORTON N. NEWBORN

NORTON N. NEWBORN CO., L.P.A.
Chagrin Plaza East, Third Floor
23811 Chagrin Boulevard
Cleveland, OH 44122
(216) 464-6400

Attorney for Railway Labor Executives' Association

Date: September 9, 1983

APPENDIX F

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

UNITED STATES OF AMERICA *et al.*,
Defendants.

DEFENDANT UNITED STATES OF AMERICA'S MOTION FOR SUMMARY JUDGMENT ON STIPULATED FACTS

Pursuant to Rule 12(b)(6) or in the alternative Rule 56, of the Federal Rules of Civil Procedure, and Rule 12 of this Court, Defendant United States of America, by its undersigned attorneys respectfully moves for an order dismissing the Complaint in this action for failure to state a claim upon which relief can be granted or, in the alternative, for an order granting summary judgment.

In support of this motion, Defendant respectfully refers the Court to the Memorandum in Support of Defendant's Motion for Summary Judgment on Stipulated Facts filed herewith and

to the Stipulation of Facts filed with the Court on August 9, 1983.

Respectfully submitted,

J. PAUL MCGRATH
Assistant Attorney General

Dennis G. Linder
DENNIS G. LINDER

/s/ C. Max Vassanelli
C. MAX VASSANELLI

Attorneys, Department of Justice
Civil Division—Room 3730
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
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OF COUNSEL:

JOHN J. MASON
Chief Counsel
GRADY L. COTHEN, JR.
Special Assistant to the Chief Counsel
Federal Railroad Administration
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

APPENDIX G

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

UNITED STATES OF AMERICA

and

CONSOLIDATED RAIL CORPORATION,
Defendants.

DEFENDANT CONSOLIDATED RAIL CORPORATION'S MOTION FOR JUDGMENT ON STIPULATED FACTS

Pursuant to Rules 12(b)(6), 54, 56, and 57 of the Federal Rules of Civil Procedure, and Rule 12 of this Court, Defendant Consolidated Rail Corporation, by its undersigned attorneys, respectfully moves for an Order dismissing this Complaint for a failure to state a claim upon which relief can be granted or, in the alternative, for an order granting judgment.

In support of this motion, Defendant relies upon the Stipulation of Facts filed with the Court on August 9, 1983, and other matters within the scope of judicial notice.

Respectfully submitted,

/s/ Harry A. Rissetto
HARRY A. RISSETTO
THOMAS E. REINERT, JR.
1800 M Street, N.W.
Washington, D.C. 20036

/s/ John W. Rowe
JOHN W. ROWE
DENNIS ALAN AROUCA
1138 Six Penn Center
Philadelphia, PA 19103

Counsel for
CONSOLIDATED RAIL CORPORATION

OF COUNSEL:

MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5000

APPENDIX H

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

§ 1152 Panel
Civil Action No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

UNITED STATES OF AMERICA

and

CONSOLIDATED RAIL CORPORATION,
Defendants.

FILED
DEC 19 1983
James F. Davey, Clerk

Before: GASCH, Presiding Judge, and BRYANT and WEINER, Judges

GASCH, Presiding Judge:

The plaintiff is the Railway Labor Executives' Association (RLEA), an association whose members are the chief executive officers of railway labor unions. RLEA brings this suit against Consoliated Rail Corporation (Conrail) and the United States seeking declaratory and injunctive relief. The case centers on the statutory repeal of certain labor protective provisions granted to Conrail employees by earlier statutes.

The Regional Rail Reorganization Act of 1973 (RRR Act),[1] created Conrail and enabled it to succeed seven bankrupt

[1] Pub. L. No. 93-236, 87 Stat. 985 (1974) (codified at 45 U.S.C. § 701 *et seq.*).

railroads. Title V of the RRR Act freed Conrail[2] from provisions of existing job stabilization agreements[3] and provided for the employee benefits that are the subject of this litigation.[4]

The Staggers Rail Act of 1980,[5] made some reforms in the labor protection provisions of Title V.[6] With enactment of the Northeast Rail Service Act in 1981 (NRSA),[7] the RRR Act's labor protection provisions underwent major reforms. Section

---

[2] Section 504(a) of the RRR Act provided that Conrail was to be bound by the collective bargaining agreements of its predecessors as if it had been an original party thereto until new collective bargaining agreements could be negotiated with the representatives of the employees. Existing job stabilization agreements were excepted, however.

[3] The Penn Central Merger Protection Agreements and the Erie Lackawanna Merger Protection Agreement covered contract employees of some railroads in reorganization immediately prior to creation of Conrail by the RRR Act. These agreements included provisions prohibiting transfer of work from one railroad to another or from one seniority district to another. The agreements in effect guaranteed lifetime employment for railroad employees at or very near their place of employment at the time of merger.

[4] Section 505 of Title V provided for monthly displacement allowances to any employee who was deprived of employment by the reorganization, gave transferred employees a number of protections, and provided for separation allowances to employees who voluntarily resigned.

[5] Pub. L. No. 96-448, 94 Stat. 1895 (1980).

[6] Section 501 of the Staggers Act amended Section 505(b) of the RRR Act to provide for different methods of calculating Monthly Displacement Allowances for members of four employee categories. The Staggers Act amendments to the RRR Act were the subject of this Court's decision in *Hinds* v. *Conrail*, 518 F.Supp. 1350 (Sp. Ct. RRRA 1981). The plaintiffs in *Hinds* alleged that the effect of the Staggers Act amendments was to reduce or eliminate the Monthly Displacement Allowance for certain categories of employees. *Id.* at 1352.

[7] Pub. L. No. 97-35, § 1132 *et seq.*, 95 Stat. 644.

1132 of NRSA set out Congressional findings and declarations in support of NRSA. These included that:

> (4) the provisions for protection of employees of bankrupt railroads contained in the Regional Rail Reorganization Act of 1973 have resulted in the payment of benefits far in excess of levels anticipated at the time of enactment, have imposed an excessive fiscal burden on the Federal taxpayer, and are now an obstacle to the establishment of improved rail service and continued rail employment in the Northeast region of the United States; and
>
> (5) since holding Conrail liable for employee protection payments would destroy its prospects of becoming a profitable carrier and further injure its employees, an alternative employee protection system must be developed and funded.

45 U.S.C. § 1101. Section 1143 enacted new labor protection provisions (in the form of a new Title VII to the RRR Act, 45 U.S.C. § 797 *et seq.*). Section 1144 of NRSA repealed Title V's employee protection provisions. The plaintiff has brought this suit to attack this repeal of Title V of the RRR Act. Count I of the complaint states that Title V's employee protection provisions were contractual in nature. The plaintiff contends that Congress' repeal of Title V thus violated the due process and taking clauses of the fifth amendment of the United States Constitution.

In Count II of the complaint, plaintiff alleges that Title V was incorporated by reference in a contract between Conrail and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) and remains binding on Conrail as to those employees. Conrail and BRAC entered into the collective bargaining agreement pursuant to the provisions of Section 504 of the RRR Act, effective July 1, 1979. That agreement provides that protected employees are to be afforded "the benefits as provided in Appendix No. 8 or 9 whichever is applicable." Appendix 8 to the BRAC agreement is a reproduction of Title V of the

RRR Act.[8] Plaintiff contends that this agreement incorporated Title V by reference and that Conrail's failure to adhere to Title V's provisions subsequent to its repeal constitutes a violation of the Railway Labor Act.[9]

COUNT ONE

I. The Standard For Review

The issue in Count One of this case is whether Title V created a contractual[10] obligation of the United States or whether the Title V labor protection provisions were instead gratuitous, social welfare benefits. "Congress [is] free to reduce gratuities deemed excessive. But Congress [is] without power to reduce expenditures by abrogating contractual obligations of the United States." *Lynch* v. *United States*, 292 U.S. 571, 580

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[8] Appendix 9 is a memorandum for the protection of employees of Conrail in Canada.

[9] The plaintiff cites three procedural provisions of the Railway Labor Act, 45 U.S.C. § 151 *et seq.* Section 2, First, 45 U.S.C. § 152 requires parties to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions. Section 2, Seventh, 45 U.S.C. § 152, provides that "[n]o carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title." Section 6, 45 U.S.C. § 156, provides that parties to major disputes must maintain the status quo until they have exhausted the Act requirements of notice, negotiation, and mediation.

[10] Under *Union Pacific R.R. Co.* v. *United States (Sinking Fund Cases)*, 99 U.S. 700 (1879), the United States is as much bound by its contract as individuals would be. *Id.* at 718-19. Moreover, such a binding contractual obligation can arise from a statute, and the obligations created by such a statute cannot be altered unilaterally by subsequent legislation. *United States* v. *Central Pacific R.R. Co.*, 118 U.S. 173, 174 (1886).

(1934).[11] Congress' repeal of social welfare legislation violates the due process clause of the Fifth Amendment only if it is arbitrary and irrational. *Fleming* v. *Nestor*, 363 U.S. 603, 611 (1959). If Title V did create a contract right, however, then the Court must ascertain whether the repeal of Title V violated the taking clause or the due process clause of the fifth amendment.[12]

II. The Existence of a Contract

Title V may be held to create a contract only if such was Congress' clear intent. *See FHA* v. *Darlington, Inc.*, 358 U.S. 84, 91 (1959); *United States Trust* v. *New Jersey*, 431 U.S. 1, 17 n.14 (1977). Title V does not expressly purport to create a

---

[11] It is well settled that in cases where Congress attempts to override contracts between two *private parties*, the "legislation readjusting rights and burdens 'between employers and employees is not unlawful solely because it upsets otherwise settled expectations.' " *United Transp. Union* v. *Consolidated Rail Corp.*, 535 F. Supp. 697, 708 (Sp. Ct. RRRA 1982) (quoting *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)). Legislation adjusting economic benefits and burdens of private parties is presumed constitutional and the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976) (citations omitted).

[12] The defendants' argument that plaintiff's "settled expectations" have not been upset, even if Title V benefits were contractual, is inapposite. The "settled expectation" language of the Supreme Court in *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976), reiterated by this court in *UTU* v. *Conrail*, 535 F. Supp. 697, 708 (1982), pertains to expectations resulting from *private* contracts. 428 U.S. at 15, 535 F. Supp. at 708. The standard of review for congressional acts alleged to abrogate the federal government's contractual obligations is higher than the standard of review where Congress is alleged to have interfered with contracts between private parties. *See UTU* v. *Conrail*, 535 F. Supp. at 706.

contract,[13] nor, in the legislative history is it stated that Congress' intent was to create a contract. *Hinds* v. *Conrail*, 518 F. Supp. 1350, 1352 n.2 (Sp. Ct. RRRA 1981), *cert. denied*, 454 U.S. 1145 (1982). What the legislative history does suggest, and what plaintiff apparently views as dispositive, is that Congress was fully aware that Title V would supersede employee rights that had been collectively bargained for and were, in fact, contractual.

The legislative history of Title V does not indicate that Congress intended Title V to compensate employees for contractual rights forfeited when Conrail was created. In *Hinds* v. *Conrail*, 518 F. Supp. 1350 (Sp. Ct. RRRA 1981), Judge Wisdom stated that the Staggers Act labor protective provisions, which amended Title V of the RRR Act, constituted "social welfare legislation" for purposes of Fifth Amendment review. *Id.* at 1353. That finding was not dicta. On the contrary, the finding that Title V was social welfare legislation was necessary to the Court's decision to apply minimal scrutiny analysis. *See id.* Although the amendments in *Hinds* were under equal protection attack, their characterization as noncontractual serves due process analysis as well.

Upon reconsideration, the court finds that the benefits[14] that plaintiffs gave up at the time Title V was enacted did not constitute consideration for the enactment. That the purpose of Title V may have been to secure labor peace and political support for the consolidation, *Hinds* v. *Consoliated Rail Corp.*, 518 F. Supp. at 1352 n.2, does not mean that such exchange created a contract. Most labor legislation is a product of political agreements between labor, the carriers, and

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[13] The cases that have been found to support findings of legislative contract generally pertain to statutes that *expressly* create contracts. *See, e.g., United States Trust Co.* v. *New Jersey*, 431 U.S. 1, 17-18 (1977); *Perry* v. *United States*, 294 U.S. 330, 348 (1935).

[14] As employees of bankrupt railroads, the plaintiff's employee benefits were of questionable value.

government. The fact that a statute incorporates a labor management settlement does not make the statute a contract.[15] *Cf. Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 575, 585 (1979).

The plaintiff has argued that Title V differs from social welfare legislation in that Title V benefits were to be conferred on a limited number of people for a limited period of time. As to the question of limitation on the number of beneficiaries, the Supreme Court has found legislation conferring benefits on a limited number of persons to be social welfare legislation. In *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. 166 (1980), the Court found that Section 231b(h) of the Railroad Retirement Act of 1974 constituted social welfare legislation, *id.* at 174, although it provided for benefits for which only a limited number of people were eligible. How long a social welfare program is scheduled to endure does not, in this court's view, alter the program's nature either.

Because the court finds that Title V constitutioned social welfare legislation, conferring gratuitous, rather than contractual, benefits, the proper standard for review is whether the repeal of Title V was arbitrary and unreasonable. *See*

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[15] The plaintiff has cited *Dodge* v. *Bd. of Education*, 302 U.S. 74 (1937), for the proposition that statutes confirming settlements of disputed rights and defining the terms of the settlements are clearly contracts. The Supreme Court in *Dodge* illustrated its meaning by reference to *New Jersey* v. *Yard*, 95 U.S. 104 (1877) and *New Jersey* v. *Wilson*, 11 U.S. (7 Cranch) 164 (1812). 302 U.S. at 78 n.9. In *New Jersey* v. *Yard*, the Court found that a contract existed where the legislature "required . . . a formal written acceptance within sixty days or else it became inoperative." 95 U.S. at 115. It is true that in *New Jersey* v. *Yard* the statute provided a solution to a dispute between the State of New Jersey and a corporation of whether the state could tax the corporation. The statute in that case, however, additionally set forth express terms of contract. Likewise, in *New Jersey* v. *Wilson*, the parties *expressly* intended to create a contract, and "[e]very requisite to the formation of a contract [was] found." 11 U.S. at 164-65.

Fleming v. *Nestor*, 363 U.S. at 611. The court finds that the need to reduce expenditures in order to assure the viability of Conrail, as expressed in the findings and declarations in Section 1132 of NRSA, constitutes an adequate rational basis to support this legislation.

COUNT TWO

In Count Two of the complaint, the plaintiff contends that a collective bargaining agreement between BRAC and Conrail incorporated Title V by reference.[16] The plaintiff argues that the subsequent repeal of Title V did not absolve Conrail of its obligation to provide Title V benefits to BRAC's members. This, plaintiff argues, is because the terms of Title V were, in effect, frozen in the BRAC-Conrail agreement. The inquiry in this count is, thus, whether Conrail remains bound to pay Title V benefits to BRAC's members.

Even if the original Title V was indeed made part of the BRAC-Conrail contract, Congress' subsequent repeal of Title V superseded the terms incorporated by that contract. The question presented here is comparable to that presented by United Transportation Union (UTU) in *United Transportation Union* v. *Conrail (Cannon)*, 535 F. Supp. 697 (Sp. Ct. RRRA), *cert. denied sub nom. Cannon* v. *Consolidated Rail*

---

[16] Regardless of whether the parties intended their contract to incorporate Title V, such incorporation could not have occurred if, as defendant contends, it was in fact precluded by the terms of Title V itself. Section 504(d) provides that any job stabilization provisions pursuant to the Act may not exceed those established therein. The United States contends that this provision, reenacted as Section 708(a), 45 U.S.C. § 797g, limits job stabilization agreements to those provided for in the statute as amended. The document allegedly incorporated, however, was Title V as it stood at the time of the contract. The defendants' argument stretches the meaning of Section 504(d) since that section originally did not impose any limits other than those in Title V.

Corp., 457 U.S. 1133 (1982). In *Cannon*, UTU argued that Conrail could sever employees and refuse to fill vacancies thus created, as permitted by Section 702, 45 U.S.C. § 797a, only when such refusal was not inconsistent with collective bargaining agreements. 535 F. Supp. at 700. As noted by the Court in *Cannon*, the language of the statute does not except those whose agreements with Conrail are inconsistent with the statute's terms. *Id.* at 703.[17] The language of NRSA applies without qualification to "employees of [Conrail] who were protected by the compensatory provisions of [Title V] immediately prior to August 13, 1981." 45 U.S.C. § 797(a)(1). It thus is inconsistent with earlier private agreements that provide different employee protections.

Because the employee protection provisions of the BRAC-Conrail agreement are inconsistent with the protections granted by NRSA, the NRSA provisions supersede the private contract benefits. It is well settled that acts of Congress override inconsistent private contracts. *Norman* v. *Baltimore & Ohio R.R.*, 294 U.S. 240, 306-09 (1935); *Louisville & N.R.R. Co.* v. *Mottley (II)*, 219 U.S. 467, 482 (1911); *see generally*, *Cannon*, 535 F. Supp. at 706-07. Moreover, the legislative history indicates that it was Congress' intent to pre-empt any inconsistent collective bargaining agreement. The Conference Report accompanying the bill that became the NRSA states in reference to the House bill that:

> [t]he benefits under this section are intended to replace the benefits provided under Title V of the RRR Act. This is the exclusive protection for employees, and any employee protection contained in collective bargaining agreements is replaced by this protection.

127 Cong. Rec. S.9060 (Daily ed. July 31, 1981).

Because the Court finds that Congress' repeal of Title V voided any contractual requirement that Conrail pay Title V

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[17] Moreover, "Conrail required no authorization from Congress to do what existing agreements permitted." 535 F. Supp. at 704.

benefits, it is unnecessary to ascertain whether the agreement did, in fact, incorporate Title V by reference. Conrail's refusal to pay Title V benefits to members of BRAC did not violate the Railway Labor Act's procedural requirements.

/s/ Oliver Gasch
OLIVER GASCH
Presiding Judge

/s/ William B. Bryant
WILLIAM B. BRYANT
Judge

/s/ Charles R. Weiner
CHARLES R. WEINER
Judge

Date: December 19, 1983

APPENDIX I

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

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§ 1152 Panel
C.A. No. 82-11

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

UNITED STATES OF AMERICA

and

CONSOLIDATED RAIL CORPORATION,
Defendants.

FILED
DEC 23 1983
JAMES F. DAVEY, Clerk

JUDGMENT

This action having come on for hearing before the § 1152 Panel of the Court and the issues having been duly heard and the Court's opinion having been filed on December 19, 1983,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed on its own merits.

/s/ Oliver Gasch
OLIVER GASCH
Presiding Judge

Dated: December 22, 1983

Office - Supreme
FILED
FEB 15 1984
CLERK

No. 83-1146

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Petitioner

v.

UNITED STATES OF AMERICA and
CONSOLIDATED RAIL CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the Special Court Regional Rail Reorganization Act of 1973

BRIEF OF RESPONDENT CONSOLIDATED RAIL CORPORATION IN OPPOSITION

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February 15, 1984

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QUESTIONS PRESENTED

1. Did Congress intend by enacting Title V of the Regional Rail Reorganization Act of 1973 to enter a contract between the United States and railway employees, which was impaired in violation of the Fifth Amendment to the Constitution when Congress repealed Title V with the Northeast Rail Service Act of 1981.

2. Whether the Special Court, Regional Rail Reorganization Act of 1973, correctly interpreted the Northeast Rail Service Act of 1981 to supersede inconsistent collective bargaining agreements that require Conrail to pay employee protection benefits according to the repealed provisions of Title V.

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IN THE

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RAILWAY LABOR EXECUTIVES' ASSOCIATION,
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v.

UNITED STATES OF AMERICA and
CONSOLIDATED RAIL CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the Special Court Regional Rail Reorganization Act of 1973

BRIEF OF RESPONDENT CONSOLIDATED RAIL CORPORATION IN OPPOSITION

Respondent, Consolidated Rail Corporation (hereinafter "Conrail") respectfully requests that the Petition for a Writ of Certiorari of Petitioner Railway Labor Executives' Association (hereinafter "RLEA") to review the judgment of the Special Court, Regional Rail Reorganization Act of 1973, entered on December 23, 1983 in Case No. 82-11, be denied.

OPINIONS BELOW, JURISDICTION AND CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Opinions Below, Jurisdiction, and Constitutional And Statutory Provisions Involved are adequately set forth in the Petition for a Writ of Certiorari.[1]

STATEMENT OF THE CASE

This case is one of a series of constitutional challenges to the employee protection provisions of the Regional Rail Reorganization Act of 1973 (hereinafter "3R Act"), as amended, Pub. L. No. 93-236, 87 Stat. 985, 45 U.S.C. § 701 *et seq.* (1976).[2] At issue is the special labor protection program applicable to many Conrail employees and originally enacted as Title V of the 3R Act. Petitioner, an association of railway labor unions, asserts that Title V constituted a contract between the United States and railway labor that was unconstitutionally impaired

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[1] The Respondent also incorporates by reference the Petition's Appendix, which includes the Memorandum Opinion of the Special Court, filed December 19, 1983, for which review is sought.

[2] In *Hinds v. Consolidated Rail Corp.*, 518 F. Supp. 1350 (Sp.Ct.R.R.R.A. 1981), *cert. denied*, 454 U.S. 1145 (1982), the Special Court rejected an equal protection challenge to amendments to the Title V protections enacted by the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980). *United Transportation Union v. Consolidated Rail Corp. (Cannon)*, 535 F. Supp. 697 (Sp.Ct.R.R.R.A. 1982), *cert. denied sub nom. Cannon v. Consolidated Rail Corp.*, 102 S.Ct. 2960 (1983) presented a due process challenge to the Section 702 separation program of the Northeast Rail Service Act of 1981, Subtitle E of Title XI of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 643 (1981), which similarily was found to be meritless.

by the repeal of Title V under Section 1144 of the Northeast Rail Service Act of 1981 (hereinafter "NRSA"), Subtitle E of Title XI of the Omnibus Budget Reconciliation of Act of 1981, Pub. L. No. 97-35, 95 Stat. 643 (1981). Petitioner also maintains that by repealing Title V Congress did not intend to supersede inconsistent protective provisions contained in collective bargaining agreements.

Title V was enacted in 1973 with the legislative purpose of lessening the impact of reorganization on the employees of the predecessor bankrupt railroads whose assets were conveyed to form Conrail. The program provided displacement, separation, termination and moving expense allowances for protected employees. Congress initially authorized $250 million for Title V benefits, with the expectation that these federal funds would sustain the program until the year 2021, when the last covered employee would be eligible for retirement. In Judge Wisdom's words, this was a "monumental miscalculation;" for the actual costs of the program far exceeded the projections, and the $250 million authorization was exhausted in 1980, 40 years prematurely. *Hinds, supra* note 2 at 1354. With the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), Congress addressed the labor protection problem by narrowing the circumstances that entitled employees to benefits, authorizing an additional $235 million in funding, and specifying that labor protection costs in excess of this additional funding would be borne by Conrail. *See Hinds.* Nonetheless, the Title V program remained prohibitively expensive.

In 1981, Congress concluded that preserving Northeast rail service and returning Conrail to the private sector required more fundamental legislative action,

and enacted the Northeast Rail Service Act.[3] Addressing labor protection, Congress found that the Title V provisions had "resulted in the payment of benefits far in excess of levels anticipated at the time of enactment, have imposed an excessive fiscal burden on the Federal taxpayer, and are now an obstacle to the establishment of improved rail service and continued rail employment in the Northeast region . . ." NRSA, Sec. 1132(4) . With NRSA, Congress repealed Title V and substituted an affordable employee protection program. Pursuant to new Section 701, added by NRSA Section 1143, protected employees are eligible for benefits up to $20,000 under a schedule promulgated by the Secretary of Labor. Congress also authorized an additional $250 million to fund the Section 701 program. 95 Stat. 668.

The decision below by the Special Court, Regional Rail Reorganization Act of 1973, arose from Petitioner's two-sided challenge to the repeal of Title V under Section 1144 of NRSA, and its implementation by Conrail. Petitioner in Count I of the Complaint claimed that Title V was "bargained" legislation which could not be repealed consistent with the Due Process Clause of the Fifth Amendment. Adjudicating the case on stipulated facts, the Special Court rejected Petitioner's theory that Title V was a contract. Rather, the Court held, as it had pre-

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[3] Conrail has achieved profitability, and pursuant to NRSA the Secretary of Transportation is currently engaged in the process of soliciting proposals for sale of the railroad to the private sector. 130 Cong. Rec. E. 238-9 (Daily ed. Feb. 1, 1984). The RLEA, on behalf of its employee members, made a formal proposal for the purchase of Conrail to the Secretary of Transportation of June 14, 1983. N.Y. Times, June 15, 1983, at A1, col. 1.

viously held in *Hinds*, that Title V was social welfare legislation, and could, therefore, be repealed constitutionally. In Count II, Petitioner alleged that Title V benefits were contractual because of their incorporation in a collective bargaining agreement between Conrail and the Brotherhood of Railway and Airline Clerks (hereinafter "BRAC"), and that Conrail violated the Railway Labor Act by refusing to pay Title V benefits after their repeal. In rejecting this latter claim, the Special Court interpreted the NRSA repeal of Title V as superseding any inconsistent contractual obligation to pay Title V benefits.

REASONS FOR DENYING THE WRIT

I. The Special Court Correctly Held That Title V Of The 3R Act Was Not A Contract.

Petitioner's due process challenge to the repeal of Title V does not present a special or important constitutional question, *see* Sup. Ct. R. 17.1, but rather, a narrow issue of interpretation of legislative purpose. The gravamen of Petitioner's claim is that by enacting Title V, Congress entered a contract with railway labor that was constitutionally immune from subsequent repeal. In rejecting Petitioner's theory, the Special Court applied the standards for distinguishing statutory contracts that have been articulated by this Court, and utilized traditional techniques of statutory interpretation. The Special Court's holding that Title V was a noncontractual social welfare program is a reiteration of its decision in *Hinds*, which this Court previously declined to review.[4]

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[4] Petitioner asserts that the Special Court erroneously relied on its prior finding in *Hinds* that Title V was a noncontractual

In reaching its decision, the Special Court followed this Court's precedent which hold that statutory contracts will only be found when there is clear evidence of legislative intent. *See United States Trust Co. v. New Jersey*, 431 U.S. 1, 17-18 (1977); *F.H.A. v. Darlington, Inc.*, 358 U.S. 84, 91 (1958); *Perry v. United States*, 294 U.S. 330, 348 (1935). As Petitioner admits, Title V does not expressly purport to create contractual rights. Pet. 18. The Special Court found no statement in the legislative history that indicated Congressional intent to create a contract. Pet. 90a-91a. Petitioner cites no legislative reports or statements by individual legislators that contradict this finding. At most, Petitioner quotes testimony to Congress that indicates legislative awareness of pre-consolidation collectively bargained rights to labor protection. Pet. 91a. Ultimately, Petitioner relies on the political and historical context of the enactment of Title V to argue that employees had a legal and moral right to labor protection. Pet. 9. But the Special Court correctly concluded that the political context of the enactment of Title V is insufficient to create a statutory contract. Pet. 91a-92a. *See Hinds*, 518 F. Supp. at 1352 n.2; *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 575, 585 (1979). Because Title V was social welfare legislation and not a contract, its repeal did not violate the Fifth Amendment. *See United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980); *Flemming v. Nestor*, 363 U.S. 603 (1960).

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social welfare program. Pet. 19. Despite Petitioner's protestations, the *Hinds* holding "was not dicta", for "the finding that Title V was social welfare legislation was necessary to the Court's decision to apply minimal scrutiny analysis." Pet. 91a. Nonetheless, the Court below reconsidered the issue based upon Petitioner's arguments. *Id.*

The Court should not review the Special Court's constitutional decision, which is based entirely on an interpretative finding that Title V was noncontractual social welfare legislation. The Special Court was originally established by Congress to exercise exclusive jurisdiction over certain specific matters arising out of the implementation of the 3R Act, as amended, and that jurisdiction was extended by Section 1152 of NRSA. Because the Special Court has original and exclusive jurisdiction over the dispute, its decision does not and cannot conflict with the decision of another federal or state court. The Special Court has a unique familiarity with the 3R Act, as amended, and its interpretation of the Act's legislative purposes is entitled to weight, particularly concerning an issue it has previously adjudicated. The interpretation of Title V of the 3R Act, although of significance to the parties in this litigation, does not involve an important question of federal law which has not been but should be settled by this Court. Petitioner has failed to demonstrate any special or important reasons for granting certiorari to review the Special Court's decision that the repeal of Title V was constitutional.

II. The Decision Below Properly Interpreted The Repeal Of Title V Of The 3R Act As Superseding Inconsistent Contractual Provisions.

The Special Court also rejected Petitioner's alternative, nonconstitutional challenge to Conrail's implementation of the labor protective provisions of NRSA. Petitioner argued below that Conrail has a continuing obligation under the Railway Labor Act to pay Title V benefits to BRAC-represented employees, despite the provision's repeal, because Title V allegedly was incorporated into the Conrail-BRAC collective

bargaining agreement. Pretermitting the question whether any such contractual obligation existed, the Special Court held that by repealing Title V Congress intended to supersede any inconsistent contractual obligations to pay Title V benefits.

The Special Court's decision concerning the supersessive effect of Section 1144 of NRSA is firmly based in the legislative record. NRSA repealed Title V and expressly substituted a new program of benefits under Section 701. An explicit purpose of the Act was to remove liability for employee protection from Conrail. NRSA, Sec. 1132(5). As the Court noted, Pet. 94a, the Conference Report accompanying the bill that became NRSA stated:

> [T]he benefits under this section are intended to replace the benefits provided under Title V of the RRR Act. This is the exclusive protection for employees, and any employee protection contained in collective bargaining agreements is replaced by this protection.

127 Cong. Rec. S. 9060 (Daily ed. July 31, 1981).

Petitioner's characterization of the Special Court's opinion as supporting "repeal by implication" is simply inapposite. Pet. 23. NRSA expressly repealed Title V and Congress expressly stated its intent to supersede inconsistent contractual obligations. As the Special Court had previously held in *Cannon*, *supra* note 2, Congress had the power in enacting NRSA to override inconsistent collectively bargained provisions. *See Norman v. Baltimore & Ohio R. Co.*, 294 U.S. 240, 306-9 (1935); *Louisville & N.R.R. Co. v. Mottley (II)*, 219 U.S. 467, 482 (1911). Throughout the history of the 3R Act, Congress has played a special role in specifying Conrail's labor protection obli-

gations and restricting the scope of Conrail's bargaining under the Railway Labor Act concerning the issue. *See* 3R Act, § 504(d). By complying with the NRSA labor protection provisions, Conrail did not violate the Railway Labor Act.

The Special Court's interpretation of NRSA is based in the Court's expertise concerning the 3R Act, and should not be disturbed. The issue is not a special or important one, but rather, only of significance to employees covered by the Conrail-BRAC agreement. Petitioner offers no convincing reasons for reviewing the Special Court's decision, which is clearly without error.

CONCLUSION

For the foregoing reasons, Respondent Consolidated Rail Corporation respectfully submits that the Petition for Writ of Certiorari to the Special Court, Regional Rail Reorganization Act of 1973 should be denied.

Respectfully submitted,

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